SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 119

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

vs.

ROSENBERG BROTHERS & COMPANY

No. 120

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

vs.

CALIFORNIA WINE ASSOCIATION

No. 121

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

vs.

S. L. JONES & COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

64946—27—1

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In the Southern Division of the United States District Court, for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,692.

ROSENBERG BROS. & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

No. 18,046.

S. L. JONES & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of the Southern Division of the District Court of the United States for the Northern District of California, Third Division:

The United States Shipping Board Emergency Fleet [1*] Corporation, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the respective final decrees entered in the above-entitled causes in the above-entitled court, the said causes having been ordered consolidated and heard together in said District Court, and the parties having stipulated, and it having been ordered that the said causes may be consolidated on the appeals from said decrees, and that the pleadings, testimony, depositions and exhibits in said causes may be included in one record for the purposes of such appeals;

You are hereby requested to prepare and certify apostles on appeal, to be filed in said Appellate Court in due course, and to include in said apostles the following papers and documents and matters:

1. The matters as to all of said causes specified in subdivision (1) of Section 1 of Rule IV of the Rules in Admiralty for the United States Circuit Court of Appeals for the Ninth Circuit.

2. All of the pleadings in all of said causes, together with the exhibits annexed thereunto.

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*Page-number appearing at foot of page of original certified Apostles on Appeal.

3. All of the testimony, depositions, exhibits, stipulations between proctors other than stipulations extending time, and all other proofs adduced in said causes, exhibits consisting of charts, diagrams, advertisements, insurance documents, bills of lading, etc., to be sent up in their original form as original exhibits.

4. The opinion and decision and opinion and decision on exceptions of the District Court in said causes.

5. The final decrees in said causes and the notices of appeal therefrom.

6. The assignment of errors in said causes. [2]

7. The praecipe for apostles on appeal in said causes.

8. Stipulations and orders in said causes extending time to docket record.

9. All interlocutory orders of the District Court in said causes.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for United States Shipping Board Emergency Fleet Corporation.

Due service and receipt of a copy of the within praecipe for apostles is hereby admitted this 23d day of December, 1925.

J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
EDWARD J. McCUTCHEON.

[Endorsed]: Filed Dec. 23, 1925. [3]

In the Southern Division of the United States District Court, Northern District of California, Third Division.

No. 17,692.

ROSENBERG BROS. & CO., a Corporation,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation.

STATEMENT OF CLERK U. S. DISTRICT COURT.

PARTIES.

Libelant: Rosenberg Bros & Co., a Corp.

Respondent: United States Shipping Board Emergency Fleet Corporation, a Corp.

PROCTORS.

For Libelant: J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., McCutcheon, Olney, Mannon & Greene.

For Respondent: Ira S. Lillick, Esq.

PROCEEDINGS.

1922

Oct. 25. Filed libel.

Issued citation, which was returned executed.

1923.

May 10. Filed exceptions to libel. [4]

May 21. Ordered that the exceptions to libel be submitted (Hon. John S. Partridge, Judge.)

Dec. 26. Filed opinion. Ordered that the exceptions to the libel be overruled.

1924.

Feb. 4. Filed answer to libel, with interrogatories attached.

Jun. 17. Filed answers to interrogatories propounded to libelant.

Nov. 20. Filed agreed statement of facts.

Dec. 29. Hearing of issues (Hon. Frank H. Kerrigan, Judge.

Filed deposition of Walter H. Strong.

Dec. 30. Hearing resumed.

Dec. 31. Hearing resumed.

1925.

Jan. 2. Hearing resumed.

Jan. 6. Hearing resumed.

Jan. 7. Hearing resumed. Ordered cause submitted.

Sept. 23. Filed opinion. Ordered that a decree be entered in favor of libelant.

Sept. 24. Filed final decree.

Oct. 23. Filed motion to modify final decree.

Oct. 26. Motion to modify final decree denied.

Nov. 13. Filed notice of appeal.

Filed cost bond on appeal.

Dec. 14. Motion to stay execution submitted.

Dec. 23. Filed assignment of errors.

Filed praecipe for apostles on appeal.

[5]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,692.

ROSENBERG BROS. & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

LIBEL IN PERSONAM.

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court, for the Northern District of California:

The libel of Rosenberg Bros. & Co., a corporation, against United States Shipping Board Emergency Fleet Corporation, a corporation, in a cause of contract and deviation, civil and maritime, respectfully shows:

FIRST CAUSE OF LIBEL.

I.

That libelant is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue [6] of the laws of the District of Columbia, doing business in the state of California, and having its principal office and place of business in said state at 369 Pine Street in the city and county of San Francisco.

That at all times herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel.

III.

That libelant heretofore and to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent fifteen hundred (1500) sacks of rice for carriage, by said steamer "West Aleta" as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant. That respondent duly received said fifteen hundred (1500) sacks of rice on board said steamer as such common carrier of merchandise by sea and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said rice as aforesaid.

IV.

That respondent duly issued its bills of lading

on account of the said shipment on the dates and for the quantities following, to wit:

(1) On the thirty-first day of December, one thousand nine hundred and ninteen, for five hundred (500) sacks.

(2) On the thirty-first day of December, one thousand nine hundred and nineteen, for five hundred (500) sacks. [7]

(3) On the thirty-first day of December, one thousand nine hundred and nineteen, for two hundred thirty-eight (238) sacks.

(4) On the sixth day of January, one thousand nine hundred and twenty, for two hundred sixty-two (262) sacks.

V.

That the full amount of freight charged and due for said shipment was the sum of three thousand and thirty (3,030) dollars, which said libelant prepaid.

VI.

That on or about the sixth day of January, 1920, said steamer "West Aleta," having on board said fifteen hundred (1500) sacks of rice, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage to said port of Rotterdam, Holland, said vessel, with the knowledge and privity of respondent, and pursuant to respondent's orders and directions, deviated from said voyage and proceeded on an entirely different voyage to the port of Hamburg, Germany; that during the course of said deviation and after the said steamer "West Aleta" had passed far beyond the said port

of Rotterdam, without entering said port, she stranded upon Terschelling Island (in the North Sea), and became a total loss.

VII.

That by reason of said deviation, stranding and loss of the said steamer "West Aleta" the said fifteen hundred (1500) sacks of rice were totally lost, all to the damage of said libelant in the sum of sixteen thousand one hundred thirty-four (16,-134) dollars. [8]

SECOND CAUSE OF LIBEL.

I.

That libelant is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business in said state at 396 Pine Street in the city and county of San Francisco.

That at all times herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel; that at all times herein mentioned the steamer "Cockaponset" was an American steamer

operated by said respondent solely as a mercha vessel.

III.

That libelant heretofore, and to wit, on or abo the fifteenth day of December, 1919, delivered good order and condition at San Francisco, Ca fornia, to respondent four thousand (4,000) sac of rice, for carriage by said steamer "Cockapo set," as a common carrier of merchandise by s upon a voyage to Rotterdam, Holland, and delive there in like good order and condition unto t order of said libelant; that respondent duly r ceived said four thousand (4,000) sacks of rice a agreed to carry the same by said steamer to Rott dam, Holland, and there to deliver said rice aforesaid. [9]

IV.

That respondent duly issued its bill of lading account of said shipment of four thousand (4,00 sacks of rice on the fifteenth day of Decemb 1919.

V.

That the full amount of freight charged and d for said shipment was the sum of eight thousa one hundred and sixty (8,160) dollars, which su libelant prepaid.

VI.

That respondent wrongfully neglected to ship s hundred and eighty (680) of said four thousa (4,000) sacks of rice by the said steamer "Cock ponset" and said vessel sailed from San Francis without having on board said six hundred a

eighty (680) sacks of rice; that thereafter respondent placed said six hundred and eighty (680) sacks of rice aboard the said steamer "West Aleta" for shipment to said port of Rotterdam, Holland.

VII.

That on or about the 6th day of January, 1920, said steamer "West Aleta," having on board said six hundred and eighty (680) sacks of rice, sailed from San Francisco, California; that instead of proceeding upon a voyage from San Francisco to said port of Rotterdam, Holland, said vessel, with the knowledge and privity of respondent and pursuant to respondent's orders and instructions, deviated from said voyage and proceeded on an entirely different voyage to the port of Hamburg, Germany; that during the course of said deviation and after the said "West Aleta" had passed far beyond the said port of Rotterdam, Holland, without entering said port, she stranded on Terschelling Island (in the North Sea) and became a total loss.

VIII.

That by reason of said deviation, stranding and loss of [10] the said steamer "West Aleta," the said six hundred and eighty (680) sacks of rice were totally lost, all to the damage of said libelant in the sum of seven thousand five hundred and eighty-two (7,582) dollars.

WHEREFORE, libelant prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction and in accordance with

acts of Congress in such cases made and provided, may issue to and against the said respondent, the United States Shipping Board Emergency Fleet Corporation, citing and admonishing it to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to pronounce for and award to libelant its damages aforesaid, with interest and costs, and will enter a decree for said damages, interest and costs in favor of libelant and against respondent, and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEON, OLNEY, WILLARD,
MANNON & GREENE,
Proctors for Libelant. [11]

State of California,
City and County of San Francisco,—ss.

R. S. Geen, being first duly sworn, deposes and says:

That he is an officer, to wit, the secretary of Rosenberg Bros. & Co., a corporation, libelant in the above-entitled cause; that said Rosenberg Bros. & Co. is a corporation duly organized and existing under and by virtue of the laws of the State of California; that affiant makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing libel and knows the contents thereof,

and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are documents, correspondence and papers coming to his attention as such officer of said corporation.

R. S. GEEN.

Subscribed and sworn to before me this 11th day of October, 1922.

[Seal] RAY S. FEDER,

Notary Public in and for the City and County of San Francisco, California. [12]

INTERROGATORIES ADDRESSED TO RESPONDENT TO BE ANSWERED BY IT UNDER OATH.

First Interrogatory.

Did respondent, or its agents, give the steamer "West Aleta," or its officers, any sailing orders prior to its departure from San Francisco, California, on or about the sixth day of January, 1920?

Second Interrogatory.

If the answer to the foregoing first interrogatory shall be in the affirmative, attach a true and correct copy of said sailing orders to the answer to these interrogatories.

Third Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, instructions or directions in

writing, other than said sailing orders, respecting the ports of call of said vessel upon the voyage about to be commenced, or respecting the orders of calling thereat?

Fourth Interrogatory.

If the answer to the foregoing third interrogatory shall be in the affirmative, attach true and correct copies of all said orders, instructions and directions to the answer to these interrogatories. [13]

Fifth Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, instructions, or directions, in any other way than in writing, respecting the ports of call of said vessel upon the voyage about to be commenced, or respecting the order of calling thereat?

Sixth Interrogatory.

If the answer to the foregoing fifth interrogatory shall be in the affirmative, state fully what all said orders, instructions and directions were.

Seventh Interrogatory.

After the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in writing to said vessel or its officers respecting

ports at which said vessel should call on said voyage or the order of calling at said ports?

Eighth Interrogatory.

If the answer to the foregoing seventh interrogatory shall be in the affirmative, attach true and correct copies of said orders, instructions and directions to the answer to these interrogatories.

Ninth Interrogatory.

After the departure of said vessel from San Francisco, California, on or about the sixth day of January, 1920, [14] did respondent or its agents give any orders, instructions or directions in any other way than in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage, or the order of calling at said ports?

Tenth Interrogatory.

If respondent's answer to the foregoing ninth interrogatory shall be in the affirmative, state fully what said orders, instructions and directions were and how given.

Eleventh Interrogatory.

What was the first port of call of said steamer "West Aleta" on the voyage from San Francisco, California, leaving on or about the sixth day of January, 1920?

Twelfth Interrogatory.

To what first port of call was said steamer "West

Aleta" bound at the time of her stranding in or about the month of February, 1920?

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEON, OLNEY, WILLARD,
MANNON & GREENE,
Proctors for Libelant.

[Endorsed: Filed Oct. 25, 1922. [15]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

EXCEPTIONS TO LIBEL.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

Now comes the United States Shipping Board Emergency Fleet Corporation, above-named respondent, appearing herein by its proctor, Ira S. Lillick, and excepts to the libel, and each alleged cause of libel therein contained, on file herein, upon the following grounds:

I.

That neither said libel, nor either of the alleged causes of libel set forth therein, state facts sufficient to constitute a cause of libel against respondent herein. [16]

II.

That neither said libel, nor either of the alleged causes of libel set forth therein, state facts sufficient

to confer jurisdiction upon this Court, and said Court is without jurisdiction of the matters contained in said libel, and each count thereof.

Further excepting to said libel, and particularly to the first alleged cause of libel therein contained, respondent specifies:

I.

That said first alleged cause of libel fails to state facts sufficient to constitute a cause of libel against respondent herein.

II.

That said alleged cause of libel fails to state facts sufficient to confer jurisdiction upon this Court, and said Court is without jurisdiction over the matters contained therein.

III.

That said alleged cause of libel fails to allege that the steamship "West Aleta" was employed, and/or operated, as a merchant vessel at the time of the filing of said libel, or at the commencement of the said cause of action therein contained.

IV.

That at the time of the filing of said libel herein, the steamship "West Aleta" was not within the Northern District of California, nor within the jurisdiction of this Court. [17]

V.

That at the time of the filing of this libel herein, the steamship "West Aleta" was not within the territorial limits of the United States, nor of its possessions, nor within the jurisdiction of this Court.

VI.

That at the time of the filing of said libel herein, more than one year had elapsed since the coming into effect of that certain act of Congress, known as Suits in Admiralty Act, March 9, 1920, and particularly Section 5 thereof, and that by and under the provisions of said act, the said alleged causes of libel set forth in said libel, and each thereof, are barred.

VII.

That said libel, and particularly the first count thereof, is insufficient, in the following:

(a) That it cannot be ascertained from Article III therein contained upon what route respondent agreed to carry, and/or transport, the merchandise specified therein to Rotterdam, Holland.

(b) That it cannot be ascertained from Article VI therein contained what voyage is meant by the agreed voyage to said port of Rotterdam, Holland.

(c) That it cannot be ascertained from article VI therein contained whether or not the port of Hamburg was a port of call, to which said steamer "West Aleta" was privileged to call on the voyage agreed upon in the bill of lading.

Further excepting to said libel, and particularly to the second alleged cause of libel therein contained, respondent specifies: [18]

I.

Said respondent hereby refers to paragraphs I, II, III, IV, V and VI of its exceptions to the first alleged cause of libel herein contained, and incor-

porates each and all of said paragraphs, as though fully set forth herein.

II.

That said libel, and particularly the second count thereof, is insufficient in the following:

(a) That it cannot be ascertained from Articles III and/or VI therein contained upon what route respondent agreed to carry, and/or transport, the merchandise specified therein to Rotterdam, Holland.

(b) That it cannot be ascertained from Article VII therein contained whether or not the port of Hamburg, Germany, was a port of call, to which said steamers "Cockaponset" and/or "West Aleta," or either of them, were privileged to call on the voyage agreed upon in the bills of lading.

WHEREFORE, respondent prays that said libel herein be dismissed, and that respondent have judgment for its costs of suit herein.

IRA S. LILLICK,
Proctor for Respondent.

Receipt of a copy of the within exceptions to libel is hereby admitted this 10 day of May, 1923.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed May 10, 1923. [19]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 26th day of December, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM H. HUNT, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—DECEMBER 26, 1923—ORDER DIRECTING FILING OF OPINION AND OVERRULING EXCEPTIONS TO LIBEL.

Pursuant to opinion of Judge John S. Partridge, this day received, it is ordered that said opinion be filed and that the exceptions to the libel heretofore submitted be and the same are hereby overruled, with 10 days allowed to answer. [20]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,692.

ROSENBERG BROS. & CO., a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

IN ADMIRALTY—No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

OPINION.

PARTRIDGE, JOHN S.—These two actions arise from the loss of the steamer "West Aleta." In the Rosenberg case, the libel alleges that the libelant shipped on the "West Aleta" fifteen hundred (1500) bags of rice, consigned to Rotterdam. In addition, libelant delivered to respond-

ent four thousand (4,000) bags of rice for shipment on the "Cockaponset" for Rotterdam, but that respondent diverted six hundred and eighty (680) bags of this second lot, and shipped them on the "West Aleta." The value of this rice is alleged to be the sum of twenty-three thousand seven hundred and sixteen dollars ($23,716.00).

In the California Wine Association case, libelant shipped on the "West Aleta" eleven thousand (11,000) barrels of wine, for shipment to Cardiff, and two thousand nine hundred [21] and ninety-two (2,992) barrels of wine and eleven hundred and eight (1108) barrels of brandy for shipment to Rotterdam. The value of the wine and brandy is alleged to be six hundred forty-two thousand eight hundred and seventy-one dollars ($642,871.00).

All the goods in both cases were shipped from San Francisco.

Both libels then allege that the "West Aleta" deviated from her voyage and proceeded on an entirely different voyage to Hamburg, and that during this deviation she stranded upon Terschelling Island in the North Sea and, as a result of the deviation, the ship and goods became a total loss.

Both libels likewise allege that "at all times herein mentioned" the vessel was an American steamer operated by respondent solely as a merchant vessel.

To these libels exceptions are filed directly attacking the jurisdiction of the court. The reasons

for this attack are that it affirmatively appears that at the time of the filing of the libels, the "West Aleta" was not operated as a merchant vessel nor was she within the territorial limits of the United States or its possessions, nor within the jurisdiction of the court.

In addition to that, the exceptions set up that at the time of the filing of the libel more than a year had elapsed since the going into effect of the Suits in Admiralty Act of March 9, 1920, and that, therefore, the causes of libel are barred by Section 5 thereof.

There is thus squarely presented to the Court the questions:

1. What is the status of a libel for the recovery of damages sustained by the loss of goods on a vessel operated by the Emergency Fleet Corporation when the [22] suit is filed more than one year after the Act went into effect:

2. Do the sections of the statute limiting actions to causes in which the vessel was employed in the merchant service and physically within the United States, apply where she has, by wrongful deviation become a total loss?

The principle that the sovereign cannot be sued without his consent found no ready acceptance in these United States. It was, of course, settled law in England, at the time of the Revolution; although, as a practical matter, leave was almost always granted upon a Petition of Right. The doctrine was strongly urged in the Federalist, No. 81, in the following language:

> "It is inherent in the nature of sovereignty not to amenable to the suit of an individual without his consent. This is the general sense, and general practice of mankind."

But it certainly was not considered the "general sense" of this country by the first Chief Justice of the Supreme Court of this Republic. On the contrary, he most vigorously and picturesquely repudiated it, as unsuited to a free people—a people who were themselves the sovereign, and the only sovereign, ruling themselves by their duly elected representatives. (Chisholm vs. Georgia, 2 Dall, 419.)

In the same case Mr. Justice Blair used this language: "To the Constitution of the United States, the term sovereign is totally unknown. There is but one place where it could have been used with propriety. But, even in that place, it would not, perhaps, have comported with the delicacy of those who ordained and established that Constitution. They might have announced themselves 'sovereign' people of the [23] United States; but, serenely conscious of the *fact,* they avoided the *ostentatious declaration.*"

In this case, however, the first Chief Justice did perceive a difference between a suit against a state, and against the United States. The language is as follows:

> "I perceive, and therefore candor urges me to mention, a circumstance, which seems to favor the opposite side of the question. It is this: the same section of the constitution which

extends the judicial power to controversies 'between a state and the citizens of another state,' does also extend that power to controversies to which the United States are a party. Now, it may be said, that if the word, party, comprehends both plaintiff and defendant, it follows, that the United States may be sued by any citizen, between whom and them there may be a controversy. This appears to me to be fair reasoning; but the same principles of candor which urge me to mention this objection, also urge me to suggest an important difference between the two cases. It is this: in all cases of actions against states or individual citizens, the national courts are supported in all their legal and constitutional proceedings and judgments, by the arm of the executive power of the United States; but in the cases of actions against the United States, there is no power which the courts can call to their aid. From this distinction important conclusions are deducible, and they place the case of a state and the case of the United States, in very different points of view.

"I wish the state of society was so far improved, and the science of government advanced to such a degree of perfection, as that the whole nation could in the peaceable course of law, be compelled to do justice, and be sued by individual citizens. Whether that is or is not, now the case, ought not to be thus collater-

ally and incidentally decided: I leave it a question."

(1 L. Ed. 465.)

Cohens vs. Virginia, 6 Wheat. 380, is usually cited as the first case in which the Supreme Court recognized the general doctrine of immunity from suit. This, however, merely depends upon the general language of Chief Justice Marshall. And, in fact, the Chief Justice, in one of the greatest expositions of true political opinions ever written in any language, held that jurisdiction did attach. This case was, like Chisholm vs. Virginia, a suit against a state, and did not in anywise involve the question of a suit against the United States.

Almost a hundred years after the decision in Chisholm vs. Georgia, Mr. Justice Miller, in United States vs. Lee, 106 U. S. 196, said: [24]

> "And while the exemption of the United States and of the several states, from being subjected as defendants to ordinary actions in courts, has since that time been repeatedly asserted here, *the principle has never been discussed or the reasons for it given,* but it has always been treated as an established doctrine. U. S. vs. Clarke, 8 Pet. 436; Same vs. McLemore, 4 How. 286; Hill vs. U. S., 9 How. 386; Nation vs. Johnson, 24 How. 195 (65 U. S. XVI, 628); The Siren, 7 Wall. 152 (74 U. S. XIX, 129); The Davis, 10 Wall. 15 (77 U. S. XIX, 875)."

And, while, as Mr. Justice Miller said, no reasons *for the principle* had ever been given, a most per-

suasive argument had been made *against it* by Mr. Justice Blair in the Chisholm case. His language is as follows:

> "For in the practice, and even at length, in the science of politics there has very frequently been a strong current against the natural order of things, and an inconsiderate or an interested disposition to sacrifice the end to the means. As the state has claimed precedence of the people; so, in the same inverted course of things, the government has often claimed pre*de*dence of the state; and to this perversion in the second degree, many of the volumes of confusion concerning sovereignty owe their existence. The ministers, dignified very properly by the appellation of the magistrates, have wished, and have succeeded in their wish, to be considered as the sovereigns of the state. This second degree of perversion is confined to the old world, and begins to diminish even there; but the first degree is still too prevalent even in the several states, of which our Union is composed. By a state I mean, a complete body of free persons united together for their common benefit, to enjoy peaceably what is their own, and to do justice to others. It is an artificial person. It has its affairs and its interests: It has its rules: It has its rights: And it has its obligations. It may acquire property distinct from that of its members. It may incur debts to be discharged out of the public stock, not out of the private fortunes of indi-

viduals. It may be bound by contracts; and for damages arising from the breach of those contracts. In all our contemplations, however, concerning this feigned and artificial person, we should never forget, that, in truth and nature, those who think and speak and act, are men.

"Is the foregoing description of a state a true description? It will not be questioned, but it is. Is there any part of this description, which intimates in the remotest manner, that a state, any more than the men who compose it, ought not to do justice and fulfill engagements? It will not be pretended that there is. If justice is not done; if engagements are not fulfilled; is it upon general principles of right, less proper, in the case of a great number, than [25] in the case of an individual, to secure, by compulsion, that which will not be voluntarily performed? Less proper it surely cannot be. The only reason, I believe why a free man is bound by human laws, is, that he binds himself. Upon the same principles, upon which he becomes bound by the laws, he becomes amenable to the courts of justice, which are formed and authorized by these laws. If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do this likewise? If the dignity of each singly, is undiminished, the dignity of all jointly must be unimpaired. A state, like

a merchant, makes a contract; a dishonest state, like a dishonest merchant, wilfully refuses to discharge it: The latter is amenable to a court of justice: *Upon general principles of right shall the former when summoned to answer the fair demands of its creditors, be permitted, Proteuslike, to assume a new appearance, and to insult him and justice, by declaring, I am a sovereign state? Surely not. Before a claim, so contrary, in its first appearance, to the general principles of right and equality, be sustained by a just and impartial tribunal, the person, natural or artificial, entitled to make such claim, should certainly be well known and authenticated.*"

In United States vs. Lee, however, the doctrine is strictly limited. The language is:

"On the other hand, while acceding to the general proposition that in no court can the United States be sued directly by original process as a defendant, there is abundant evidence in the decisions of this court that the doctrine, if not absolutely limited to cases in which the United States are made defendants in name, is not permitted to interfere with the judicial enforcement of the established rights of plaintiffs, when the United States is not a defendant or a necessary party to the suit."

The Court then discusses the reasons why the English rule is not applicable to our form of government, and says:

"Under our system the people, who are there called subjects, are the sovereign. Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of a monarch. The citizen here knows no person, however near to those in power or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered. When he, in one of the courts of competent jurisdiction, has established his right to property, there is no reason why deference to any person, natural or artificial, *not even the United States,* should prevent him from using the means which the law gives him for the protection and enforcement of that right."

Moreover, in the Lee case, the Court quotes this language of Chief Justice Marshall in United States vs. Peters, 5 Cranch, 115: [26]

". . . . *but it certainly can never be alleged that a mere suggestion of title in a State to property in possession of an individual, must arrest the proceedings of the Court, and prevent their looking into the suggestion and examining the validity of the title.*"

The opinion in the Lee case goes on to consider the contention that United States vs. Peters should be distinguished from a case in which the officers of the Government asserted no title in themselves, but admittedly held only as agents of the Government. But the Supreme Court considered that this contention was answered by the case decided

shortly after the Peters case, to wit, Meigs vs. McClung, 9 Cranch, 11. That case was against certain army officers who held land upon which the United States had erected expensive improvements as quarters for a garrison. The Lee case quotes the language of Chief Justice Marshall, *"that the plaintiff below might sustain his action"* as authority for the proposition that the immunity of the United States does not extend to its officers or agents. In Meigs vs. McClung, however, this point was not discussed or mentioned except in the single phrase quoted above and italicized by the Supreme Court. In Wilcox vs. Jackson, 13 Pet. 498, also, jurisdiction was entertained in a suit against officers of the army to dispossess them of a fort belonging to the United States. In that case, as in Meigs vs. McClung, the point does not appear to have been raised (although in the McClung case, it was among the exceptions). In relying upon Osborn vs. United States Bank, 9 Wheat. 738, however, the Supreme Court certainly found unquestioned authority and sound reasoning. The Supreme Court quotes from the Osburn case as follows:

> "A few citations from the opinion of Marshall, Ch. J., will show the views entertained by the court on the question thus raised. At page 842 of the long report of the case, he says: [27]
>
> " 'If the State of Ohio could have been made a party defendant, it can scarcely be denied that this would be a strong case for an in-

junction. The objection is that, as the real party cannot be brought before the court, a suit cannot be sustained against the agents of that party; and cases have been cited to show that a court of chancery will not make a decree, unless all those who are substantially interested be made parties to the suit. This is certainly true where it is in the power of the plaintiff to make them parties, but if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong, which they would afford against him could his principal be joined in the suit.'

"In another place he says: 'The process is substantially, though not in form, against the State . . . . and the direct interest of the State in the suit as brought is admitted; and had it been in the power of the bank to make it a party, perhaps no decree ought to have been pronounced in the cause until the State was before the court. But this was not in the power of the bank, ... and the very difficult question is to be decided, whether, in such a case, the court may act upon agents employed by the State and on the property in their hands.' In answering this question he says: 'A denial of jurisdiction forbids all

inquiry into the nature of the case. It applies to cases perfectly clear in themselves; to cases where the Government is in the exercise of its best established and most essential powers, as well as to those which may be deemed questionable. It asserts that the agents of a State, alleging the authority of a law void in itself because repugnant to the Constitution, may arrest the execution of any law in the United States.' Again: 'The bank contends that in all cases in which jurisdiction depends on the character of the party, reference is made to the party on the record, not to one who may be interested, but is not shown by the record to be a party.' 'If this question were to be determined on the authority of English decisions, it is believed that no case can be adduced where any person can be considered as a party who is not made so in the record.' Again: 'In cases where a State is a party on the record, the question of jurisdiction is decided by inspection. If jurisdiction depend not on this plain fact, but on the interest of the state, what rule has the Constitution given by which this interest is to be measured? If no rule is given, is it to be settled by the court? If so, the curious anomaly is presented of a court examining the whole testimony of a cause, inquiring into and deciding on the extent of a State's interest, without having a right to exercise any jurisdiction in the case. Can this inquiry be made without the exercise of jurisdiction?' "

And the Supreme Court sums up its conclusions as follows: [28]

"This examination of the cases in this court establishes clearly this result: that the proposition that when an individual is sued in regard to property which he holds as officer or agent of the United States, his possession cannot be disturbed when that fact is brought to the attnetion of the court, has been overruled and denied in every case where it has been necessary to decide it; and that in many others, where the record shows that the case as tried below, actually and clearly presented that defense, it was neither urged by counsel nor considered by the court here, though, if it had been a good defense, it would have avoided the necessity of a long inquiry into plaintiff's title and of other perplexing questions, and have quickly disposed of the case. And we see no escape from the conclusion that, during all this period the court has held the principle to be unsound, and in the class of cases like the present, represented by Wilcox vs. Jackson, Brown vs. Huger, and Grisar vs. McDowell, it was not thought necessary to re-examine a proposition so often and so clearly over-ruled in previous well considered decisions."

And *on principle,* as follows:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the Government, from the

highest to the lowest, are creatures of the law and are bound to obey it.

"It is the only supreme power in our system of government, and every man who, by accepting office, participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

"Courts of justice are established not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the Government, and the docket of this court is crowded with controversies of the latter class.

"Shall it be said, in the face of all this, and of the acknowledged right of the judiciary to decide in proper cases, statutes which have been passed by both branches of Congress and approved by the President, to be unconstitutional, that the courts cannot give remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the Government without any lawful authority, without any process of law and without any compensation, because the President has ordered it and his officers are in possession?

"If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well regu-

lated liberty and the protection of personal rights." [29]

United States vs. Lee, together with other cases, is cited by Mr. Justice Holmes in Philadelphia Co. vs. Stimson, 223 U. S. 605, where he says:

> "If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded."

In The Siren, 7 Wall. 152, the steamer had been captured as a blockade runner in the port of Charleston. Libel in prize was filed against her, and she was sold as lawful prize, and the proceeds deposited with the United States. Before the filing of the libel, and while proceeding in charge of a prize captain and crew, the "Siren" collided with the sloop "Harper." The owners of the latter vessel filed an intervening libel after the sale, claiming a lien upon the money for the damages sustained in the collision. Mr. Justice Field sustained jurisdiction in the following language:

> "But although direct suits cannot be maintained against the United States, nor against their property, yet, when the United States institute a suit, they waive their exemption so far as to allow a presentation by the defendant of setoffs, legal and equitable, to the extent of

the demand made or property claimed, and when they proceed *in rem,* they open to consideration all claims and equities in regard to the property libeled. They then stand in such proceedings, with reference to the rights of defendants or claimants, precisely as private suitors, except that they are exempt from costs and from affirmative relief against them, beyond the demand or property in controversy. In U. S. vs. Ringgold, 8 Pet. 150, a claim of the defendant was allowed as a setoff to the demand of the Government. 'No direct suit,' said the Court, 'can be maintained against the United States. But when action is brought by the United States to recover money in the hands of a party who has a legal claim against them, it would be a very rigid principle to deny to him the right of setting up such claim in a court of justice and turn him round to an application to Congress.' So in U. S. vs. Macdaniel, 7 Pet. 16, to which reference is made in the case cited, the defendant was allowed to setoff against the demand of the Government a claim for services as agent for the payment of the navy pension fund, to which the court held he was equitably entitled. The question, said the Court, was, whether the defendant should surrender the money which happened to be in his hands, and then petition Congress on [30] the subject; and it was held that the Government had no right, legal or equitable, to the money."

It is thus apparent that the Supreme Court has given but a reluctant assent to the doctrine of immunity from suit, albeit the principle, in its general form, is well established. It is likewise apparent that the Supreme Court has limited the doctrine to suits directly against the United States, or *in rem* against property to which it held the title—and not even then, when the officer or agent claimed *title* in the United States, and that title was put in issue.

Now, Mr. Justice Story, in the Malek Adhel, 2 How. 209, summarizes a well-known principle of maritime law as follows:

> "The ship is also, by the general maritime law, held responsible for the torts and misconduct of the master and crew thereof, whether arising from negligence or a willful disregard of duty; as, for example, in cases of collision and other wrongs done upon the high seas or elsewhere, within the admiralty and maritime jurisdiction, upon the general policy of that law which looks to the instrument itself, used as the means of the mischief, as the best and surest pledge for the compensation and indemnity to the injured party."

Another ancient principle may be expressed in the language of Fletcher Moneton, L. J. (1907) 1 K. B. 669:

> "A deviation is such a serious matter, and changes the charactar of the voyage so essentially, that a shipowner who has been guilty of a deviation cannot be considered as having

performed his part of the bill of lading contract, but something fundamentally different, and therefore he cannot claim the benefit of stipulations in his favor contained in the bill of lading."

(Quoted in Garver on Carriage of Goods by Sea, 6th Edition, Page 398.)

These general principles, well established and of ancient cognizance, should be kept in mind in a consideration of the statutes in a case like this. It is equally well established that when a governmental agency engages in a strictly private business (especially when, as here, it comes in competition with private persons) it loses many of its special privileges, and is to be regarded as far as possible as being subject to the same rules as such private [31] persons. (See Davoust vs. City of Alameda, 149 Cal. 70; Western Savings Fund Society vs. City of Philadelphia, 31 Pa. St. 183.)

Now in this case, a corporation formed under the laws of the District of Columbia for war purposes, was engaged in time of peace in the strictly merchant trade. It could not be claimed that the ship was performing any public function or any function to which the doctrine of public policy could attach. The stock of the company, it is true, is owned by the United States, and its functions, rights and liabilities, admittedly are largely a creation of Congressional enactment. But, in spite of that, it was doing, in the case of the "West Aleta," a strictly private business.

I take it that nothing in a material way is so

essential now, to the manifest destiny of this Republic as the healthy development of her foreign trade. It is a matter of common knowledge that production outruns the needs of our people in ever increasing ratio. Manufactures of every conceivable kind, raw materials, and the products of orchards and farm, must find foreign markets, if our progress is to continue. And the problem of how to find and how to keep those markets is to a considerable degree a problem of transportation. That we must be long dependent upon foreign bottoms for that transportation is unthinkable. In every way possible, therefore, American ships must be made attractive to American cargoes, and American cargoes made profitable for American ships. It would be but a poor means to that end, if the courts were to strain the statutes under which merchant vessels operated by an agency of the Government itself, should be held free of liability for the loss of goods entrusted to their care.

In a recent case (Director General of Railroads vs. Kastenbaum, No. 39, October Term, 1923, decided Nov. 12, 1923) [32] the Supreme Court had occasion to consider whether the Government could be held for damages for false imprisonment, for an arrest made on the demand of the detective force of a railroad while under federal control. The Court, speaking through the Chief Justice, quotes from Missouri vs. Ault, 256 U. S. 563, that "The Government undertook as carrier to observe all existing laws," and points out that the action for false imprisonment is "in the nature of a tres-

pass for a wrong or illegal act," and therefore holds the Government responsible.

So, throughout our judicial history, the tendency is to restrict, rather than to enlarge, the immunity of the Government from suit—to hold it more and more to the same liability as a private corporation, when it engages in a private business, in competition with private enterprise. That this is a sound development, no one would deny. That it should apply to admiralty, with peculiar force, seems to me in the very nature of things, to be apparent.

I am, therefore, constrained to hold that this is not a suit against the Government, nor does it come within Section 5 of the Suits in Admiralty Act. Moreover, I cannot conceive that it can be reasonably maintained that where a ship has gone to the bottom by virtue of a deviation, that the Court is without jurisdiction, because, by virtue of her own wrong, she is not physically within the United States.

The exceptions will therefore be overruled, with ten days to answer in each case.

[Endorsed]: Filed Dec. 26, 1923. [33]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

ANSWER.

To the Honorable the Judges of the Southern Division of the United States District Court for the Northern District of California:

The answer of United States Shipping Board

Emergency Fleet Corporation, a corporation, respondent herein, in a cause of contract, civil and maritime, admits, denies and alleges, as follows:

I.

Answering unto Articles I and II of the first alleged cause of libel, respondent admits the allegations therein contained.

II.

Answering unto Article III in said first cause of libel, and particularly unto the allegation therein that on or about the 31st day of December, 1919, and the 6th day of January, 1920, Rosenberg Bros. & Co., a corporation, delivered in good order and condition at San Francisco, California, 1,500 sacks of rice for carriage by the steamer "West Aleta," as alleged therein, respondent [34] is ignorant so that it can neither deny nor admit the same, wherefore it calls for strict proof.

Said respondent denies that said 1,500 bags of rice, or any of them, were delivered in good order and/or condition aboard the steamer "West Aleta," but alleges that it was agreed, under the terms of the bill of lading, that said 1,500 bags of rice were shipped in apparent good order and condition on board the steamship "West Aleta," and not otherwise.

Respondent denies that said 1,500 bags of rice were to be transported, and/or delivered, in like good order and/or condition, as alleged in said article, but, in this behalf, admits that said 1,500 bags of rice were to be carried upon said steamer, and delivered at the port of Rotterdam, Holland, in accordance with the

terms and conditions of certain bills of lading issued for said shipment, and that, among other things, said bill of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in said bill of lading at the port of Rotterdam, Holland.

III.

Answering unto Article IV of said first alleged cause of libel, respondent admits the issuance of its bills of lading on account of said shipments on the dates and for the quantities, as alleged in said articles, but, in this behalf, respondent refers to the original thereof which it prays that the libelant may be required to produce upon the trial.

IV.

Answering unto the allegations of Article V of said first cause of libel, respondent admits the same. [35]

V.

Answering unto Article VI of said first cause of libel, respondent admits that on or about the 8th day of January, 1920, said steamer "West Aleta" sailed from the port of San Francisco, and that at said time it had on board 1,500 sacks of rice, but denies that, pursuant to respondent's orders and/or directions, and/or otherwise, and/or at all, that said steamer deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different voyage to the port of Hamburg, Germany, but, in this behalf, respondent alleges that by and under the terms and

conditions of the bill of lading, it was agreed, among other things, that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port or ports more than once."

Furthermore answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

VI.

Answering unto Article VII of said first cause of libel, respondent denies that the said 1,500 sacks of rice were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but, in this behalf, respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty "to touch at any port, or ports, in any rotation, or order, in or out of the customary route, and to call at any port, or ports, more than once." As to the remaining allegations in said article, respondent alleges that it has no knowledge or information sufficient to enable it to answer the same, so that it can neither admit nor deny said allegations, and therefore calls for strict [36] proof thereof.

VII.

Further answering said libel, and particularly the first alleged cause of libel, respondent alleges that at all the times in the libel mentioned, prior to said stranding, due diligence had been exercised to make said steamship "West Aleta" in all re-

spects seaworthy and properly manned, equipped and supplied, and said steamship was at all of said times in fact in all respects seaworthy and properly manned, equipped and supplied.

VIII.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent alleges that, among other things, in and by the terms of said bills of lading, it was mutually agreed that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in, or out of, the customary route and to call at any port, or ports, more than once," and, in this behalf, respondent alleges that at the time of the said stranding of the steamer "West Aleta" upon Terschelling Island, the said steamer was en route to the port of Hamburg, Germany, as a regular port of call under and by virtue of the terms of the bill of lading herein, and, as a further and separate defense, said bill of lading further provides, in part, as follows:

> "Clause 2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton) each short ton that is shipped

being represented and agreed by the shippers as being of [37] no greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting *from faults or errors in navigation,* or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances,

or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect to the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness."

"Clause 10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this bill of lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing of repairing such goods at his expense, [38] and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this bill of lading is valid unless made in writing by consignees to carrier's agent at the port

of discharge, if for matters discoverable in all or in part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or *if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery.* No suit shall be commenced on any claim under this bill of lading after six months from the delivery of the goods to the consignee, or *if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.*"

"Clause 11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any *insurance* that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods."

"Clause 14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and approved by the shipper to be solely due to the carrier's failure to use due diligence

properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise."

IX.

Further answering unto said libel, and as a separate defense thereto, respondent alleges that any damage to, or loss of cargo was caused by one or more, and/or a combination of two or more risks and/or perils excepted in said bill of lading, and/or by the provisions of the Act of Congress of the United States, approved February 13, 1893, commonly known as the Harter Act. [39]

X.

Further answering said first cause of libel, respondent alleges that no value greater than $100.00 for each short ton, or a fraction thereof, was stated by the shipper, nor was there any agreement stating any greater value.

XI.

Further answering said first cause of libel, and as a separate defense thereto, respondent alleges that no claim was presented in writing within the time limited in Clause 10 of the bill of lading, nor was any suit commenced under the bill of lading, or in respect of said shipment of goods, within the time limited in Clause 10 of the bill of lading, under which said goods were shipped and that, by reason thereof, any claims under said bill of lading, or in

respect of said goods, were waived, and became barred, and the carrier was discharged therefrom.

XII.

Further answering said alleged first cause of libel, respondent alleges that said 1,500 bags of rice were insured, and respondent claims the benefit thereof, and claims a deduction from any claim herein to the amount of any payment or loan made in respect to said shipment of rice.

XIII.

Further answering unto said first alleged cause of libel, respondent hereby refers to the bills of lading under which said goods were shipped, and prays that the libelant be compelled to produce the same at trial, and refers to each and all of the terms and conditions of said bills of lading, as though said bills of lading were attached hereto, and made a part hereof. [40]

XIV.

Further answering said alleged first cause of libel, and as a separate defense thereto, respondent alleges that it did not agree to carry said 1,500 bags of rice on any particular route, and/or to any port of call in any particular order and, in this behalf, alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port or ports, in any rotation or order in or out of the customary route."

SECOND CAUSE OF LIBEL.

I.

Answering unto Articles I and II of the second

alleged cause of libel, respondent admits the allegations therein contained.

II.

Answering unto Article III of the second cause of libel, and particularly unto the allegation therein that on or about the 15th day of December, 1919, Rosenberg Bros. & Co., a corporation, libelant herein, delivered in good order and condition at San Francisco, California, 4,000 sacks of rice for carriage by the steamer "Cockaponset," as alleged therein, respondent is ignorant so that it can neither deny nor admit the same, wherefore it calls for strict proof thereof, if relevant.

Said respondent denies that the said 4,000 bags of rice, or any of them, were delivered in good order and/or condition aboard the steamer "Cockaponset," but allege that it was agreed, under the terms of the bill of lading, that the said 4,000 bags of rice were shipped in apparent good order and condition on board the steamship "Cockaponset," and not otherwise.

Respondent denies that said 4,000 bags of rice were to be transported and/or delivered in like good order and/or condition as alleged in said article, but, in this behalf, admits that said [41] 4,000 bags of rice were to be carried upon said steamer and delivered at the port of Rotterdam, Holland, in accordance with the terms and conditions of certain bills of lading issued for said shipment and that, among other things, said bill of lading provided that said shipment was to be delivered in like apparent good order and condition

as when shipped, unto the consignee named in said bill of lading at the port of Rotterdam, Holland, and, further, said bill of lading provided that the said 4,000 bags of rice were to be transported by the steamer "Cockaponset" "to be carried upon said vessel, or any other vessel, operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board."

III.

Answering unto Article IV of the said second alleged cause of libel, respondent admits the issuance of its bills of lading on account of the said shipments on the dates and for the quantities alleged in said article, but, in this behalf, respondent refers to the said original bills of lading and demands that the libelant be required to produce said bills of lading upon the trial.

IV.

Answering unto the allegations of Article V of the said second alleged cause of libel, respondent admits the same.

V.

Answering unto Article VI of the said second alleged cause of libel, respondent denies that it neglected, and/or wrongfully neglected, to ship 680 of the said 4,000 sacks of rice by the steamer "Cockaponset" but, in this behalf, admits that 680 sacks of said 4,000 sacks of rice were shipped upon the steamer "West Aleta," in accordance with the terms and conditions of certain bills of lading issued for the said shipment and that, among other things,

said bills of lading provided that the said rice [42] was to be transported by the steamer "Cockaponset" "to be carried upon said vessel, or any other vessel, operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board."

Respondent admits that said steamer "Cockaponset" sailed from the port of San Francisco without having on board 680 sacks of the 4,000 sacks of rice.

Respondent admits that thereafter it placed the 680 sacks of rice aboard the steamer "West Aleta" for shipment to the said port of Rotterdam, Holland, which said steamer "West Aleta" was then and there being operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board.

VI.

Answering unto Article VII of the said second alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the said steamer "West Aleta" having on board the said 680 sacks of rice sailed from the port of San Francisco, California, but denies that pursuant to respondent's order, and/or directions, and/or otherwise, and/or at all, that the said steamer "West Aleta" deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different voyage to the port of Hamburg, Germany, but, in this behalf, respondent alleges that by and under the terms and conditions of the bill of lading it was

agreed, among other things, that the carrier should have liberty, "to touch at any port, or ports, in any rotation, or order, in or out of the customary route, and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss. [43]

VII.

Answering unto Article VIII of the said second alleged cause of libel, respondent denies that the said 680 sacks of rice were totally lost by reason of the alleged, and or any, deviation of the steamer "West Aleta," but, in this behalf, respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty "to touch at any port, or ports, in any rotation, or order, in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in said article, respondent alleges that it has no knowledge or information sufficient to enable it to answer the same, so that it can neither admit nor deny said allegations, and calls for strict proof thereof, if relevant.

VIII.

Further answering unto the said second alleged cause of libel, and as further and separate defenses thereto, respondent herein repeats and hereby makes a part of this answer, as fully as if set forth at length herein, all of the allegations of

Articles VII, VIII, IX, X, XI, and XIII of the answer to the first alleged cause of libel herein.

IX.

Further answering said alleged second cause of libel, respondent alleges that the said 680 sacks of rice were insured and respondent claims the benefit thereof and such deduction from any claim herein as is equal to the amount of any payment or loan made in respect of said shipment of rice by reason of any such insurance. [44]

X.

Further answering said alleged second cause of libel, and as a separate defense thereto, respondent alleges that it did not agree to carry said 680 bags of rice on any particular route and/or to any port of call in any particular order, and in this behalf, alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order or out of the customary route."

WHEREFORE respondent prays that said libel may be dismissed, and for its costs herein.

IRA S. LILLICK,
Proctor for Respondent. [45]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. W. Relyea, being first duly sworn deposes and says:

That he is an officer, to wit, the District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, Respondent

herein, and as such, is authorized to make this verification; that he has read the foregoing Answer to the Libel herein and knows the contents thereof and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. W. RELYEA.

Subscribed and sworn to before me this 4th day of February, 1924.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California. [46]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 17,692.

ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANT TO RESPONDENT.

Answer to Interrogatory No. 1: Yes.
Answer to Interrogatory No. 2: Attached.
Answer to Interrogatory No. 3: No.
Answer to Interrogatory No. 4: None given.
Answer to Interrogatory No. 5: No.
Answer to Interrogatory No. 6: None.
Answer to Interrogatory No. 7: No.
Answer to Interrogatory No. 8: None.
Answer to Interrogatory No. 9: No.
Answer to Interrogatory No. 10: None.

Answer to Interrogatory No. 11: Balboa, Canal Zone.

Answer to Interrogatory No. 12: Hamburg, Germany.

IRA S. LILLICK,
Proctor for Respondent. [47]

January 3rd, 1920.

George H. Ewart, Master
SS. "West Aleta,"
San Francisco.

Dear Sir:

SAILING ORDERS.

1. SAILING. Immediately upon your command's readiness for sea, and after all Customs formalities have been complied with, you will proceed on your voyage, via the Panama Canal, and the most direct and safest route to Hamburg, Germany, which will be your first port of discharge. After discharging, your Hamburg cargo, you will proceed to Rotterdam, Holland, to discharge the cargo you have for that port, and thence to Cardiff, England, your last port of call, where you will discharge your cargo for that port.

2. GENERAL: As Managers and Operators, you will consider us as Managers in the light of Owners, and as Operators in the light of Time Charterers. In so doing it should facilitate the keeping of your accounts as they apply to Managers or to Operators. In the keeping of your accounts on this voyage, you will keep your records separate as to such items as are for owners' account, and

such as would ordinarily be for time charterers' or Operators' account.

3. PANAMA CANAL: Approach the Balboa entrance to the Panama Canal, cautiously, until you are boarded by a Pilot. The International Banking Corporation, Ancon, Canal Zone, will act as our representatives at the Panama Canal, and all arrangements for supplies, etc., except fuel oil bunkers, or ship repairs, should be made by you through the Captain of the Fort of Balboa. All expenses at the Panama Canal, including Canal Tolls, will be paid by the International Banking Corporation. You will communicate with them promptly upon your arrival at the Panama Canal.

The Panama Agencies Company at Balboa and Cristobal are Agents for the United States Shipping Board. They are authorized to represent the Construction and Repair Department and will arrange for any necessary repairs. You should make every effort, according to instructions from the United States Shipping Board, even at higher consumption, to reach the terminal port before 10:00 A. M. in order that you may transit the Canal on the day of arrival. When forty-eight hours from Balboa, you should radio the Panama Agencies Company the expected hour and day of arrival, bunker requirements, and list of repairs, if any, in order to facilitate despatch as [48] much as possible.

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A representative of the Panama Agencies Company will meet all vessels between sunrise and sunset. Their cable address is 'U. S. Shipboard Panama."

This radiogram should also instruct them to advise the International Banking Corporation as to your expected arrival.

We understand the United States Government regulations at the Canal are such that if your vessel arrives at Balboa before 2:30 P. M., you cannot transit the Canal the same day.

The United States Shipping Board state that vessels sailing from this Coast through the Panama Canal may proceed inside breakwater at Cristobal and they will be received up to 10:00 P. M. Rules and regulations for the operation and navigation of the Panama Canal, Paragraph No. 40, reads:

> "As soon as radio communication can be established with the Canal, vessels should report their name, nationality, length, draft, tonnage, whether or not they desire to pass through the Canal, require bunkers, provisions, supplies, repairs, to go alongside a wharf, the use of tugs, probable time of arrival, length of stay in port, and any other matters of importance or of interest. If this information has been previously communicated through Agents, or otherwise, to the Captain of the Port, it will not be necessary to report by radio, but the probable time of arrival should always be sent."

4. FUEL OIL BUNKERS: The Pan-American Petroleum and Transportation Company will furnish you with all fuel oil bunkers at the Canal, the United States Shipping Board having contracted with them to supply all fuel oil at that port.

Upon sailing from San Francisco you will have sufficient fuel oil bunkers to take you to the Panama Canal.

At the Canal it will be necessary for you to fill all your double bottoms, deep tank, settling tank, after peak and fore peak, the capacity of which, we believe, is about 13,113 barrels. In other words, you are expected to have sufficient fuel oil bunkers when sailing from the Canal to cover your entire voyage, including all lay days, and your return to a United States Atlantic port.

Together with the Chief Engineer, you will sign the customary receipts for the amount of fuel oil taken, paying for which having been arranged by the United States Shipping Board.

5. SUPPLIES AND REPAIRS, BILLS AND RECEIPTS: Written requisitions for absolute necessities are always to be given Agents for attention. Written orders for such supplies as you will need at the Canal should be ready to hand to the representative [49] of the Captain of the Port

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when your vessel is boarded at Balboa. All bills of any character must be in quarduplicate, approved by you as Master and must show clearly that the goods were supplied or service performed, and be duly receipted. All bills for Fuel and Water must also be signed by the Chief Engineer. Bills for repairs will be handled by you in accordance with the regulations of the Panama Agencies Company.

We have furnished your vessel with sufficient dry stores for a one hundred and twenty-five days voy-

age; therefore, your purchase of additional supplies at the Canal should be confined strictly to perishables, and we would ask that you keep other purchases of supplies down to a minimum.

The United States Shipping Board instruct that no repairs, the cost of which will exceed in amount Fifty pounds Sterling, are to be undertaken at United Kingdom ports, without first consulting with the representative of the United States Shipping Board, No. 8 Grosvenor Garden, London, England, whose cable address is "AMSHIBO, LONDON."

6. FUEL AND WATER: On the voyage you will please give personal attention and in co-operation with the Chief Engineer, see that your supply of fuel and water are at all times sufficient for the voyage.

7. SAFE NAVIGATION: You will at all times use every precaution for safe navigation, safety of ship and cargo being of first importance. Your vessel is not insured. In ports, use every precaution to safeguard your vessel and cargo, placing such regular and extra watch as you think advisable.

8. OFFICERS AND CREW: Should it become necessary to replace any of your officers or crew, you will apply to the United States Sea Service Bureau for such men as you may require, sending this office the names, addresses, records, ratings, etc., of the men secured. At ports where this Bureau is not represented, you will, of course, recruit such men as you need through the usual channels.

9. EQUIPMENT AND STORES: There is on board your vessel for each Department, a form of Inventory covering all consumable stores and equipment on board. At the termination of each round voyage you are to turn in to our office (or in the event of the vessel being turned over to other Managers at outside ports, to our Agents in that port), a complete Inventory of stores and equipment in each department. We would direct your particular attention to the importance of seeing that this report is complete in every detail. Inventory books for all Departments have been furnished the vessel.

10. LOGS: Your vessel has been furnished with

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[50] United States Shipping Board forms of "Abstract Deck Logs" and "Abstract Engineers Log." The United States Shipping Board emphasize the necessity and importance of Masters and Chief Engineers forwarding through this office, three copies, properly filled out for each voyage. Vessels sailing from the Pacific Coast, via the Panama Canal, to Europe, should forward *prior* to departure from the last port of call at the Canal for Europe, one copy of "Abstract Deck Log" and one copy of "Abstract Engineers Log" to the Division of Operations, United States Shipping Board, Washington D. C., and two copies of each to our San Francisco office, upon arrival at your first European port of call, and this method should be followed for each leg of your voyage in case you make more than one port, either outward or home-

ward. The importance of those instructions should not be overlooked.

11. FRESH WATER: The United States Shipping Board state that all their steel steamers of 8800 tons dead weight, and upward, are to be supplied with Fresh Water not to exceed an average of 10 tons for each average running day. No exceptions are to be made to this rule, without the approval of the Port Engineer of the Division of Operations, United States Shipping Board, whose opinion on such matters should be solicited freely.

12. SLOP CHEST: In accordance with the law there is aboard your vessel a Slop Chest which is fully detailed in the list of slop equipment account placed on board by us. You have been furnished with copies of invoices covering the various articles included. You are held personally responsible for the Slop Chest and on the completion of each voyage a separate inventory in triplicate, showing the number of articles and total cost must be submitted to our office, or to our Agents at the port at which vessel may complete the voyage, in which case the report will be turned in to them, with a copy to us.

According to the law, charges for articles sold from the Slop Chest must be at a price not to exceed 10% of the cost price.

13. ACCOUNTS: One of the most important items is that of rendering complete and intelligent accounts, not only of the vessel's operations, but in connection with the detailed accounts covering the vessel's supplies and equipment, and proper forms

for rendering the accounts are on board your vessel. You should therefore, make it a point to see that all the forms are kept up to date and intelligently filled out so there will be no confusion when the vessel is turned over to the United States Shipping Board, or others, when our Management terminates.

Kindly be particularly careful in the rendering of all your accounts. [51]

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Pay Rolls which include items for overtime must be accompanied by the form showing in detail what overtime was worked and in what departments.

Any bills for repairs must show the nature of the work done. This applies not only to the work ordered by yourself, but where work is done by Agents, in the latter event being sure that bills are properly approved by yourself and the head of the Department of your ship interested.

The Government is very exacting in requiring supporting vouchers for expenditures, and we, therefore, depend upon you to see that their requirements are fully made. Four receipted bills must be rendered for all expenditures and these receipted bills must be sent to us with accounts, either through our Agents or by you direct.

Requisite forms for making up the various reports are in the hands of your Chief Officer, Chief Engineer and Steward, and if they are filled up to date, there should be no difficulty in keeping all records clear and shipshape.

14. MINE WARNINGS: Necessary instructions for safe passage through the areas which have been mined during the War are being distributed by the Hydrographic office of the Navy Department. It is very important that Masters of United States Shipping Board vessels have the latest possible information.

Before sailing from the Panama Canal, you should interview the Hydrographic Officer at the Canal and secure the latest information in his possession.

For your information, the following report was recently received from the Shipping Board at Washington:

> "Regret that American Masters continue to arrive here without warning of any kind from American authorities regarding mine fields off Gothenberg. Loss of Shipping Board vessel Lake Placid on May 19th may be charged to incomplete information furnished to Masters in United States and unless this deplorable condition is not immediately remedied, more ships and lives will be lost in these waters.
>
> American SS. Winding Gulf arrived here yesterday (June 22nd, 1919) after miraculous passage through Cattegat mine belts. Respectfully recommend wireless warnings be sent broadcast immediately. British mariners fully informed and alive to dangers. Telegraphed Skaw Light ship and light House to-day to warn all American ships."

For your information and guidance, we enclose

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[52] herewith copy of circular letter, Bulletin No. 27, issued by the United States Shipping Board, Washington, under date of December 18th, 1919. Kindly give same your careful attention.

15. LONDON REPRESENTATIVE OF UNITED STATES SHIPPING BOARD: Mr. H. T. Morse, is the Special Representative of the United States Shipping Board, Division of Operations, at London. We enclose copy of instructions issued by the United States Shipping Board, Washington, covering wireless advices which must be followed.

16. FUEL OIL BUNKERS IN EUROPE: As above stated, upon leaving the Canal you are supposed to have sufficient oil bunkers for your entire voyage and to bring you back to a United States Atlantic port. However, in case your bunkers are short, you will immediately communicate with Mr. H. T. Morse, Special representative of the United States Shipping Board, London, for bunkering instructions.

17. PASSENGERS: No passengers are to be carried upon your vessel, except upon authority from proper United States Shipping Board officials, or upon instructions from this office.

18. BILL OF HEALTH: Masters are particularly cautioned to secure necessary Bill of Health before sailing from European ports to United States ports. The United States authorities hold Masters personally responsible for this detail.

19. CIRCULAR LETTER No. 85, PILOTS, TUGS, ETC., IN EUROPE: For your information and guidance, we enclose copy of circular letter No. 85, issued by the United States Shipping Board, San Francisco, April 30th, 1919.

The information and suggestions contained therein should be quite valuable to you, and we are confident that you will handle such details to our satisfaction.

20. CIRCULAR LETTER No. 59, CREWS: For your information and guidance, we enclose a copy of the above-numbered circular letter, issued by the United States Shipping Board, San Francisco, February 7th, 1919.

21. CIRCULAR LETTER No. 125, RADIO: For your information and guidance, we enclose copy of Circular Letter No. 125, issued by the United States Shipping Board, San Francisco, August 9th, 1919, which we trust will receive your careful attention.

22. GENERAL ORDER No. 28: For your information and guidance, we enclose herewith copy of General Order No. 28, issued by the United States Shipping Board, Washington, September 5th, 1919, which we trust will receive your careful attention. [53]

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23. CIRCULAR LETTER No. 167: For your information and guidance, we enclose herewith copy of Circular Letter No. 167, issued by the United States Shipping Board, San Francisco, December 12th, 1919, relative to Radio Communication Laws

of the United States, which we trust will receive your attention.

24. BULLETIN No. 23: For your information, we are in receipt of the following Bulletin No. 23, issued by the United States Shipping Board, Washington, December 3rd, 1919, addressed to District Officers, Managers and Masters of Shipping Board vessels, under the subject, "Indicating Foreign Exchange Rates in Ships Log":

> "It has been observed that numerous disputes have arisen as to the rate at which Masters have paid members of crews in foreign countries where the rate of exchange is continually fluctuating.
>
> Such disputes may be avoided if Managers of Shipping Board vessels will have the Masters enter on the ship's Log the rate of exchange at which he received his funds and see that crews are paid at such rate."

25. GENERAL ORDER No. 48, DISCIPLINE: For your information and guidance, we enclose herewith copy of General Order, as above, issued by the United States Shipping Board, Washington, November 25th, 1919, which we trust will receive your very careful attention.

26. GENERAL ORDER No. 47, DISCIPLINE: For your information and guidance, we enclose herewith copy of General Order, as above, issued by the United States Shipping Board, Washington, November 25th, 1919, which we trust you will give your careful attention.

27. CIRCULAR LETTER No. 165: For your information and guidance, we quote herewith Circular letter, as above, issued by the United States Shipping Board, San Francisco, December 2nd, 1919:

> "Please instruct Masters of all vessels leaving the port of San Francisco, under your jurisdiction to report daily by wireless, as long as they can keep in touch, their daily fuel consumption, speed, distance run and revolutions per minute of main engines.
>
> This information is considered essential for keeping track of vessels' performances."

Kindly see that these instructions are given your careful attention.

28. BULLETIN No. 24, STOWAWAYS: For your information and careful attention, we enclose herewith copy of the above [54] Bulletin, issued

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by the United States Shipping Board, Washington, December 2nd, 1919.

29. CIRCULAR LETTER No. 168: For your information and careful attention, we enclose herewith copy of the above circular, issued by the United States Shipping Board, San Francisco, December 5th, 1919.

30. SUPERCARGOES: We enclose herewith copy of letter which we have received from the United States Shipping Board, Washington, December 1st, under the above subject, the contents of which we commend to your interest and attention.

31. IMMIGRATION SERVICE: For your information and guidance, we enclose herewith copy of letter from above office, dated September 23rd, 1919, the contents of which we commend to your interest and careful attention.

32. WIRELESS AND CABLE ADVICES: You will wireless this office from time to time, advising progress being made by your vessel between here and the Panama Canal. These reports should give the following information: Name of steamer, hour and date and distance from San Francisco. For example—"West Aleta, 8 pm, 7th, 100 miles south San Francisco."

It will not be necessary for you to give your location unless conditions should develop whereby you are obliged to deviate from your usual course.

As soon as you are in radio touch with Germany, you will kindly keep our Agent, Mr. Henry McDornan, Hamburg, advised of your position, giving him, as soon as possible, the date and hour of your expected arrival at Hamburg.

Owing to conditions developing on account of the many floating mines in the English Channel, also off the Coast of Belgium and Holland, you will, as soon as you are in wireless touch with the United Kingdom, wireless our General European Agent, Mr. W. W. Thurston, London, giving him your position, and ask for further instructions regarding pilots, etc., and you will be governed by instructions you will receive in your passage through the Channel from Mr. W. W. Thurston, or from Mr. Tobey of the United States Shipping Board at London.

Mr. Henry McDornan will furnish you with necessary sailing orders and instructions upon your departure from Hamburg, for your next port of call.

You will also radio Mr. W. W. Thurston, our General European Agent, London, and also to Mr. H. T. Morse, Special Representative of the United States Shipping Board, London, your position, giving them, as soon as possible, your date and hour of expected arrival at your European ports of call. [55]

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You will also cable us promptly, date and hour of your arrival at and departure from the Panama Canal, and any other important information, which in your opinion we should have. This is very important.

33. HOMEWARD VOYAGE: Your homeward voyage will depend upon conditions which may develop after your arrival in Europe and you will receive instructions from either Mr. H. T. Morse, above referred to, Mr. W. W. Thurston, also referred to above, or cable instructions from the proper Officials of the United States Shipping Board, or cable instructions from us.

In case your vessel returns to a United States Atlantic port in ballast, and your management and operation has not been cancelled, you will wireless forty-eight hours before your arrival at such port, the expected hour and date of your arrival, to Williams, Dimond and Company, No. 8 Bridge Street, New York City, to whom you will report,

and to the United States Shipping Board, New York and Washington.

34. UNUSUAL CONDITIONS: In case any unusual conditions develop on your voyage, and you feel that you require instructions, do not hesitate to get into communication with the nearest United States Shipping Board officials, or our Agents.

35. SUPERCARGO: The Supercargo is placed aboard your vessel under special instructions from the United States Shipping Board. He is subject to our direction in regard to his work aboard this vessel, and we will give him necessary instructions in regard to handling such documents as are necessary, including receipt and delivery of cargo, loading and discharging, and he is to give any assistance within his power to assist in expediting the dispatch of this steamer.

A letter of instructions is being handed to the Supercargo, a copy of which will be handed to you under separate cover.

Foreign Agents are to make no payment whatever to the Supercargo on account of salary or expenses.

36. WIRELESS AND CABLE ADDRESSES:

KAIMANA—Williams, Dimond & Co., San Francisco and New York.

PANCANAL, PANAMA—Officials of the Canal at Panama.

USSHIPBOARD—United States Shipping Board, New York, Washington, and any other United States port.

MORSE, SHIP MISSION, LONDON—H. T. Morse, Special representative of the U. S. Shipping Board, London, England. [56]

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AKKAIMANAL—Mr. W. W. Thurston, Williams, Dimond and Company's General European Agent, 2 Fenchurch Ave., London, E. C. 3, England.

NANRODCAM—Mr. Henry McDornan, Williams, Dimond and Company's representative, 28 Bergstrasse, Hamburg, Germany.

VANOMMEREN—Ph. van Ommeren, Williams, Dimond and Company's representative, Rotterdam, Holland.

NONERAIL—Mr. E. H. Mundy, Williams, Dimond and Company's Agent General for the United Kingdom, No. 2, Fenchurch Ave., London, E. C. 3, England.

Wishing you a safe, speedy and pleasant voyage, we remain,

Yours faithfully,

Enclosures. [57]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. W. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such, is authorized to make this verification; that he has read the foregoing answers to interroga-

tories propounded by libelant to respondent herein and knows the contents thereof and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. W. RELYEA.

Subscribed and sworn to before me this 4th day of February, 1924.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California. [58]

INTERROGATORIES DIRECTED TO LIBELANT, TO BE ANSWERED BY IT UNDER OATH.

Interrogatory No. 1. Was any insurance carried upon the said 1,500 bags of rice, and/or the said 680 bags of rice, or any part thereof, herein?

Interrogatory No. 2. If so, attach copy of insurance policy.

Interrogatory No. 3. Has any insurance been paid on account of the loss, and/or damage, to the said 1,500 bags of rice, and/or the said 680 bags of rice, herein?

Interrogatory No. 4. If so, how much and to whom have said payments been made?

Interrogatory No. 5. Has any loan been made on account of the loss, and/or damage, to the said 1,500 bags of rice, and/or the said 680 bags of rice, herein?

Interrogatory No. 6. If so, how much and to whom have the said loans been made?

IRA S. LILLICK,
Proctor for Respondent.

Due service and receipt of the within answer is hereby admitted this 4th day of February, 1924.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Feb. 4, 1924. [59]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

ANSWERS TO INTERROGATORIES PROPOUNDED BY RESPONDENT TO LIBELANT.

Now comes libelant above named, and answering the interrogatories propounded by respondent, makes the following replies:

Answer to Interrogatory No. 1: Yes, insurance was carried upon said Fifteen Hundred (1500) bags of rice and said Six Hundred and Eighty (680) bags of rice.

Answer to Interrogatory No. 2: Said insurance was covered by Certificates 688922, 692623, 692640, 692641 dated respectively December 17, 1919, December 15, 1919, December 31, 1919 and December 31,

1919, all issued by Fireman's Fund Insurance Company. Said certificates were in the usual form employed by said Insurance Company and covered the usual risks. Libelant offers to permit respondent to inspect the said original certificates at any time upon request.

Answer to Interrogatory No. 3: Yes. [60]

Answer to Interrogatory No. 4: Four Thousand Nine Hundred Thirty-nine and Twenty Hundredths ($4,939.20) Dollars, covering Six Hundred and Eighty (680) bags of rice, paid to libelant, and Fifteen Thousand Eight Hundred Forty-three and Fitty-nine Hundredths ($15,842.59) Dollars covering Fifteen Hundred (1500) bags of rice paid to William Schall & Company on behalf of Schlubach, Behrens & Company of the Hague, Holland.

Answer to Interrogatory No. 5: No.

Answer to Interrogatory No. 6: None.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [61]

State of California,
City and County of San Francisco,—ss.

R. S. Geen, being first duly sworn, deposes and says:

That he is an officer, to wit, the secretary of Rosenberg Bros. & Co., a corporation, libelant in the above-entitled cause, and makes this verification for and on behalf of the libelant for the reason that

it is a corporation, as aforesaid; that he has read the foregoing answers to interrogatories propounded by respondent to libelant herein and know the contents thereof, and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

R. S. GEEN.

Subscribed and sworn to before me this 5th day of June, 1924.

[Seal] JAMES MASON,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answers to interrogatories and receipt of a copy is hereby admitted this 16 day of June, 1924.

I. S. LILLICK,
Proctor for Respondents.

[Endorsed]: Filed Jun. 17, 1924. [62]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that the following facts are true and that said facts shall be deemed proved at any trial or trials of said cause without the necessity of any evidence other than this stipulation, to wit:

(1) That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent fifteen hundred (1500) sacks of rice for carriage, by the steamer "West Aleta" as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and deliverey there in like good order and condition unto the order of said libelant. That respondent duly received said fifteen hundred (1500) sacks of rice on board said steamer as such common carrier of merchandise by sea and agreed to carry [63] the same by said steamer to Rotterdam, Holland, and there to deliver said rice as aforesaid.

(2) That libelant heretofore and, to wit, on or about the fifteenth day of December, 1919, delivered in good order and condition at San Francisco, California, to respondent four thousand (4,000) sacks of rice, for carriage by the steamer "Cockaponset," as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivered there in like good order and condition unto the order of said libelant; that respondent duly received said four thousand (4,000) sacks of rice and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said rice as aforesaid.

(3) That respondent failed to carry six hundred eighty (680) of said four thousand (4,000) sacks of rice by said steamer "Cockaponset" and said vessel sailed from San Francisco without having on board said six hundred eighty (680) sacks of rice.

That thereafter respondent placed said six hundred eighty (680) sacks of rice aboard the said steamer "West Aleta" for shipment to said port of Rotterdam, Holland.

(4) That at the times herein mentioned the steamer "West Aleta" was owned by the United States of America and was documented in the name of the "United States represented by United States Shipping Board." Prior to the times mentioned in the libel the respondent entered into contracts with Messrs. Williams Dimond & Company for the management and operation of said steamship, copies of which managing agreement and operating agreement are hereunto annexed and marked, respectively, Exhibit "A" and Exhibit "B." [64] During all the times mentioned in the libel said steamship was operated and managed under said agreements.

(5) That the bills of lading issued with respect to the carriage of the rice described in paragraph (1) hereof were all in the form of Exhibit "C" attached hereto, except as to date, quantity, description of goods and freight charges, and this shall be deemed sufficient showing of all of said bills of lading as requested by respondent.

(6) That the bill of lading issued with respect to the carriage of the rice described in paragraphs (2) and (3) hereof was in the form of Exhibit "D" hereto attached, and this shall be deemed sufficient showing of said bill of lading as requested by respondent.

(7) That the steamship "West Aleta" loaded and

carried approximately two thousand six hundred thirty-four (2,634) tons of cargo destined for Cardiff, Wales, one thousand five hundred three (1,503) tons of cargo destined for Rotterdam, Holland, and six hundred sixty-one (661) tons of general merchandise destined for Hamburg, Germany. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower holds and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent.

(8) That at all of the material times herein due diligence was exercised to make the steamship "West Aleta" in all respects seaworthy and properly manned, equipped and supplied. [65]

(9) That from December fourth, 1919, to January sixth, 1920, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "E," and hereby made a part hereof, appeared daily in the "Daily Commercial News of San Francisco," and on and between the same dates, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "F" and hereby made a part hereof, appeared daily in "The Guide," a leading commercial paper of San Francisco.

(10) That no greater value than that mentioned in Clause 2 and/or Clause 3 of the said bill of lading was stated by the shippers, nor was any bill of lading given and agreed therefor stating a greater value.

(11) That the steamship "West Aleta" sailed from San Francisco, California, on January sixth, 1920, having on board all the rice described in paragraphs (1) and (3) hereof. That in accordance with orders issued to the master, the vessel proceeded by the direct route from the Pacific Coast to the port of Hamburg via the Panama Canal. The course of the vessel and the circumstances of stranding are shown in a copy of the master's extended protest hereto attached, marked Exhibit "G" and hereby made a part hereof. That on the twelfth day of February, 1920, at approximately two-twenty-eight o'clock A. M., the said vessel stranded and was wrecked on Terschelling Island in the North Sea, and, with all her cargo, she became a total loss. All the rice described in paragraphs (1) and (3) hereof was totally destroyed as a result of the stranding and wreck of said steamship as aforesaid. [66]

(12) That the only ground upon which libelant asserts claim against respondent is upon the ground of improper deviation.

(13) If instead of proceeding toward Hamburg as her first port of call the steamer "West Aleta" had put into Rotterdam as her first port of call, she would have arrived at Rotterdam on or about the eleventh day of February, 1920. If instead of proceeding toward Hamburg as her first port of call the steamer "West Aleta" had put into Cardiff, Wales, as her first port of call and there discharged cargo and then proceeded to the port of Rotterdam as her second port of

call, she would have arrived at Rotterdam on or about the fifteenth day of February, 1920. The market value of the rice described in paragraphs (1) and (3) hereof at Rotterdam, Holland, on or about the eleventh day of February, 1920, and on or about the fifteenth day of February, 1920, was the sum of twenty thousand seven hundred eighty-two and seventy-nine hundredths (20,782.79) dollars.

(14) That no claims in writing with respect to the matters involved herein were made, nor was this libel filed within nine (9) months after respondent received the goods described in paragraphs (1) and (3) hereof.

(15) That in stipulating the facts herein the respective parties do not concede the relevancy or materiality of any fact so stipulated.

(16) That either party may offer evidence upon matters deemed pertinent and not covered by this stipulation.

Dated: San Francisco, California, November 19th, 1924.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent. [67]

EXHIBIT "A."

Form 7045 D. of O.
(8–20–2M)

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.
MANAGING AGREEMENT.

This Managing agreement, made this 18th day of September, 1919, by and between the United States Shipping Board Emergency Fleet Corporation, the first party, hereinafter called THE CORPORATION, and William Dimond & Company of the second party, hereinafter called the MANAGER, Witnesseth:

WHEREAS THE CORPORATION is operating the vessel EELBECK and certain other vessels and desires to make an agency contract with THE MANAGER for the husbanding and managing of said vessel and such other vessels as it has assigned and may assign to THE MANAGER for such purpose;

Now, THEREFORE, IT IS AGREED AS FOLLOWS:

FIRST. THE CORPORATION hereby appoints THE MANAGER as its agent for the husbanding and managing of the vessel EELBECK and such other vessels as the CORPORATION has assigned, and may from time to time assign, to THE MANAGER for such purpose.

SECOND. THE CORPORATION will provide and pay for all fuel, fresh water, stevedoring, port

charges, pilotages, agencies, commissions and consular charges, except those pertaining to the master, officers and crew, and all other expenses which are usually borne by a time charterer of a vessel.

THIRD. THE MANAGER as such agent:

(a) Shall act as THE MANAGER of the vessel in such trade or service as THE CORPORATION shall direct being subject to the orders of THE CORPORATION as to voyages, cargoes, priorities of cargoes, charters, rates of freight, and other charges, and as to all matters connected with the use of the vessel.

(b) Shall take proper delivery of the vessel from the Operation or Construction Division of THE CORPORATION, or from the owner, builder or anyone else having control, as THE CORPORATION may direct.

(c) Shall exercise due diligence to men, equip, victual and supply the vessel and to provide and pay for all provisions, wages, and consular, shipping and discharging fees of the master, officers, and crew; all cabin, deck, engine-room, and other necessary stores; and all other costs and expenses (except those expenses to be paid by THE MANAGER out of his own funds covered by the compensation and fees hereafter provided for) properly incident to the management of the vessel, including war risk insurance, if any, required by law on the master, officers and crew.

(d) Shall exercise due diligence to maintain the vessel in a thoroughly efficient state in hull, machinery, tackle, apparel, furniture and equip-

ment, procuring for and on behalf of THE CORPORATION the necessary labor and material to effect ordinary running repairs and replacements. No extraordinary repairs or expenses shall be made or incurred and no alteration in hull, machinery, or equipment shall be made, by THE MANAGER, except in serious emergency, without first securing in writing the authorization of THE CORPORATION.

(e) Shall exercise due diligence to see that no damage to the vessel arises from loading improper cargo, from improper stowage, or from improper berthing of the vessel.

(f) Shall, whenever no separate Operator is acting, do the things required of an Operator under the terms and conditions of the regular form of Operating Agreement of THE CORPORATION then in use. [68]

(g) Shall hold all moneys collected on behalf of THE CORPORATION, and shall deposit the same in national banks or banks which are members of the United States Federal Reserve Association, as a separate trust fund to be designated "William Dimond & Company, Shipping Board Fund," and shall not mingle the same with other moneys owned or held by THE MANAGER, and shall make from such funds all disbursements hereinafter authorized to be paid by or to THE MANAGER for account of THE CORPORATION, and shall, promptly after the dispatch of each vessel, or at such other times as may be directed, account to THE CORPORATION for

moneys received and disbursed. No items not supported by vouchers aggregating more than $10 will be allowed.

(h) Shall keep separate accounts in such manner and form as may be prescribed by THE CORPORATION of all moneys collected and disbursed, and accord to accountants and other representatives of THE CORPORATION access to all books and papers, and render such assistance in the examination thereof, as the CORPORATION MAY REQUIRE.

(i) Shall exercise due diligence to do or cause to be done all things which would be done by the owner, or the owner's agent, under the usual government form of time charter, attending to all matters in connection with the management of the vessel.

FOURTH. THE CORPORATION in consideration of the services or things herein agreed to be performed, shall pay compensation and allow commissions as follows:

A. COMPENSATION FOR MANAGEMENT.

I. For each vessel up to and including the fifth $400 per month, and at the same rate for each part of a month;

II. For each vessel in excess of five, $350 per month, and at the same rate for each part of a month.

Such compensation shall be payable to THE MANAGER from the day of delivery of each vessel to THE MANAGER until redelivery or loss.

B. COMMISSIONS FOR ADVANCING FUNDS.

1. If the MANAGER is without funds of THE CORPORATION, either as THE MANAGER or as THE OPERATOR, for the disbursement of the vessel in foreign or dependency ports, and funds are there advanced by THE MANAGER, or procured from others, a commission will be allowed in accordance with the usual commissions paid in the respective ports, as certified to the United States Shipping Board by the American Steamship Association, and verified by the Comptroller.

FIFTH: If the MANAGER shall knowingly permit any cargo to be carried without the consent of THE CORPORATION or THE OPERATOR, THE MANAGER shall receive no commission, fee, or other compensation for any services rendered during the voyage.

SIXTH: Whenever THE CORPORATION may legally have the advantage of any existing or future contracts of THE MANAGER for the purchase of material, fuel, supplies, or equipment, it shall have the benefit thereof, provided that such contracts may be made available to THE CORPORATION without unreasonably interfering with the requirements of other vessels owned or operated by THE MANAGER.

SEVENTH. THE CORPORATION shall reimburse THE MANAGER for all disbursements properly incurred on its behalf as authorized in this agreement.

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EIGHTH. All salvages shall be for the benefit of THE CORPORATION. This provision, however, shall not be construed to deprive THE MANAGER of any right to salvage reserved to THE MANAGER as vessel owner under any [69] charter.

NINTH. THE CORPORATION shall have the right, at any time to terminate this agreement as to any or all vessels assigned to THE MANAGER, and to assume forthwith control of any or all of the vessels and to collect directly, all freights, moneys or other charges remaining unpaid. THE MANAGER, however, in such case shall adjust, settle, and liquidate the current business of the vessel if so required by THE CORPORATION.

TENTH. Upon giving THE CORPORATION thirty days' written notice, THE MANAGER shall have the right to terminate this agreement, such termination not to become effective as to any vessel until its arrival and discharge at a United States port. THE MANAGER shall, however, if required by THE CORPORATION, adjust, settle, and liquidate the current business of the vessel.

ELEVENTH. THE MANAGER shall, at the time of execution and delivery of this agreement, or at any other time, if so required by THE CORPORATION furnish a satisfactory bond in such amount as THE CORPORATION may order, for the faithful and proper discharge of the obligations and duties hereunder assumed.

TWELFTH. This agreement is made with the distinct understanding that THE MANAGER has in his service a competent shore force consisting of at least one port captain and one port engineer, and in the event that six or more vessels are assigned to THE MANAGER, one port steward, each of whom has had actual sea experience in his respective capacity.

THIRTEENTH. This agreement shall apply to the management of all vessels assigned to THE MANAGER, sailing from United States ports on or after the 1st day of March, 1919.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Witness as to signature:

(Sgd.) H. NEWMAN.

(Sgd.) H. H. EBEY,

By ————————,

Ass't Director of Operations,

For Director of Operations.

WILLIAMS, DIMOND & COMPANY.

Witness as to signature:

(Sgd.) GEO. S. DOADAM.

By (Sgd.) E. R. DIMOND, Member of the Firm,

The Manager. [70]

EXHIBIT "B."

Form O–2.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION OPERATING AGREEMENT.

THIS OPERATING AGREEMENT made this 18th day of Sept. 1919, by and between the United States Shipping Board Emergency Fleet Corporation, the first party, hereinafter called THE CORPORATION and WILLIAMS DIMOND & COMPANY —— OF ——, the second party, hereinafter called THE OPERATOR, Witnesseth:

WHEREAS THE CORPORATION is operating the vessel EELBECK and certain other vessels and desires to make an agency contract with THE OPERATOR for the operation of said vessel and such other vessels as it has assigned and may assign to THE OPERATOR for such purpose;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

FIRST, THE CORPORATION hereby appoints THE OPERATOR AS its agent for the operation of the vessel EELBECK and such other vessels as THE CORPORATION has assigned, and may from time to time assign, to THE OPERATOR for such purpose.

SECOND, THE CORPORATION will man, equip, victual, and supply the vessel, and provide and pay for all provisions, wages, and con-

sular, shipping, and discharging fees of the master, officers, and crew, and all cabin, deck, engine-room, and other necessary stores; and will exercise due diligence to maintain the vessel in a thoroughly efficient state in hull, machinery, tackle, apparel, furniture, and equipment for and during service.

THIRD, THE OPERATOR, as such agent:

(A) Shall operate the vessel in such trade or service as THE CORPORATION shall direct, being subject to the orders of the CORPORATION as to voyages, cargoes, priorities of cargoes, charters, rates of freight, and other charges, and as to all matters connected with the use of the vessel.

(B) Shall provide and pay for all fuel, fresh water, stevedoring, port charges, pilotages, agencies, commissions, and consular charges, except those pertaining to the master, officers and crew and all other expenses which are usually borne by a time charterer of a vessel.

(C) Shall exercise due diligence to see that all freight is prepaid, except when otherwise instructed by THE CORPORATION, or where the prevailing customs in the particular trade are to the contrary, in which case freight may be made payable at destination in accordance with such custom. All freight in cases where cargo is perishable or not worth the freight charges must be prepaid unless the custom of the trade is to the contrary.

(D) Shall issue or cause to be issued to shippers customary freight contracts and bills of lad-

ing, and shall exercise due diligence to see that such bills of lading contain all exemptions and stipulations usual to the particular trade or service in which the vessel may be engaged, and reserve to THE CORPORATION a lien upon all cargoes for the payment of freight, primage charges, dead freight, demurrage, forwarding charges, advance charges for carriage to port of shipment, for contributions in general average and special charges on cargo, and for all fines or damages which the vessel or cargoes may incur by reason of illegal, incorrect or insufficient marking or addressing of packages, or description of their contents, and in trades where customary, make the shipments subject to [71] usual war clauses, to the "Harter Act," to a provision that all general average shall be settled, unless otherwise directed by THE CORPORATION, at New York in accordance with York-Antwerp rules of 1890, and Antwerp rule of 1903, and otherwise in accordance with the rules and customs of the port of New York, and also subject to the following clause:

> "If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of loss, damage, danger, or disaster resulting from fault or negligence of the pilot, master, or crew, in the navigation or management of the ship, or from latent or other defects or unseaworthiness of the ship, whether existing at the time of shipment

or at the beginning of the voyage or on the voyage, but not discoverable by due diligence, the owner shall not be liable therefor, and the consignee or owners of the cargo shall not be exempt from liability for contribution in general average, or for any special charges incurred, but with the shipowner shall contribute in general average and shall pay such special charges as if such loss, damage, danger, or disaster had not resulted from such fault, negligence, latent or other defect or unseaworthiness."

(E) Shall collect all freights and other money due THE CORPORATION, advance all funds for all expenses properly to be paid by him as agent, and take proper general average security.

(F) Shall hold all money collected on behalf of THE CORPORATION, and shall deposit the same in national banks or banks which are members of the United States Federal Reserve Association, as a separate trust fund, to be designated "WILLIAMS DIMOND & COMPANY Shipping Board Fund," and shall not mingle the same with other moneys owned or held by THE OPERATOR, and shall make from such funds all disbursements hereinafter authorized to be paid by or to THE OPERATOR for account of THE CORPORATION; and shall, promptly after the dispatch of each vessel, or at such other times as may be directed, account to THE CORPORATION for moneys received and disbursed. No

items unsupported by vouchers aggregating more than $10 will be allowed.

(G) Shall keep separate accounts in such manner and form as may be prescribed by THE CORPORATION of all moneys collected and disbursed, and accord to accountants and other representatives of THE CORPORATION access to all books and papers, and render such assistance in the examination thereof as THE CORPORATION may require.

(H) Shall, in order to prevent speculation in freight or passenger space, exercise due diligence to see that all freight contracts show the name of actual shipper, commodities, quantities, and freight rates, except that in coastwise trade of the United States and in the West Indies trade the freight rate need not be shown on permits, but must be shown on bills of lading and must be the rate in current tariffs. No space allotted to the original shipper may be sublet on any terms or conditions whatsoever without the consent of THE CORPORATION. If THE OPERATOR shall, without the consent of THE CORPORATION, knowingly carry any cargo, the space for which has been sublet by the original shipper upon any terms or conditions whatsoever, THE OPERATOR shall receive no commission, fee, or other compensation for any services rendered during the voyage.

(I) Shall exercise due diligence to see that all bills of lading when issued agree with the freight contracts, that all wharf receipts for freight are

non-negotiable, and that a freight contract or permit is issued for each shipment.

(J) Shall exercise due diligence to perform or cause to be performed all of the customary agency duties concerned with loading and discharging cargoes at all ports included in the vessel's itinerary, and all [72] things necessary for the protection and safeguarding of the interests of THE CORPORATION.

FOURTH, THE CORPORATION in consideration of the service or things herein agreed to be performed, shall pay compensation and allow commissions and fees as follows:

A. COMPENSATION PAYABLE TO THE OPERATOR.

I. ON ALL VESSELS EXCEPT TANKERS.

(A) From United Ports:

(1) On general cargo, a commission of 2½ per cent on the gross ocean freight list.

(2) On bulk cargo a commission of 1¼ per cent on the gross ocean freight list.

The term "bulk cargo" as used herein shall include a cargo, a substantial part (amounting to 50 per cent or more) of which is loaded at one port and discharging at one port when covered by one bill of lading, and delivery is made without regard to marks or numbers, and

all United States Government cargoes, when vessel is exclusively laden therewith. Whenever the excess over such substantial part is general cargo, the commission payable on general cargo as above shall be paid on the freight earnings on such excess. Where Government cargoes are carried, and no charge or a nominal charge is made therefor the commissions and fees shall be based upon a freight schedule established in each case by the United States Shipping Board for such purpose.

(B) Into United States ports from foreign and dependency ports, a fee of $250 for each vessel.

The term "dependency ports" as used herein, shall include ports in the Hawaiian Islands, Porto Rico, Virgin Islands, Guam, Canal Zone, Philippine Islands, and Alaska.

(C) From or into United States Ports, one commission of 5 per cent on all mails, express, and commercial passenger revenue. This commission also covers all agency commissions and fees paid in foreign or dependency ports, except brokerages authorized to be paid under C–II.

II. ON TANKERS.

Between United States Ports and foreign and dependency ports, a fee of $100 for each vessel.

B. COMMISSIONS AND FEES PAYABLE TO OTHERS THAN THE OPERATOR FOR UNLOADING, LOADING AND ATTENDANCE AT FOREIGN AND DEPENDENCY PORTS.

1. ON ALL VESSELS INCLUDING TANKERS.

(A) A commission or fee for agency services in accordance with the usual commissions and fees paid in the respective ports, as certified to the United States Shipping Board by the American Steamship Association, and verified by the comptroller, provided that any commission or fee paid for attending to any mail, express, or commercial passenger revenues shall be borne by THE OPERATOR out of the Commission allowed him under A–1 (C) supra except the brokerages authorized to be paid under C–II.

The same customary commission and fees of the port will be allowed the branch house of THE OPERATOR as would be allowed to others than such branch house. [73]

C. COMMISSIONS AND FEES NOT OTHERWISE AUTHORIZED.

I. In cases where freight and charter brokerages are necessarily or properly incurred in United States ports to secure cargoes and charters, and are paid in accordance with the usages of the trade, a brokerage commission not exceeding 1¼ per cent will be allowed. In such cases in foreign or dependency ports, freight and charter brokerages will be allowed in accordance with the usual commissions and fees paid in the respective ports, as certified to the United States Shipping Board by the American Steamship Association, and verified by the comptroller.

II. In cases where passenger tickets are necessarily sold through a broker in foreign or dependency ports, a brokerage commission will be allowed in accordance with the usual commissions in the respective ports, as certified to the United States Shipping Board by the American Steamship Association, and verified by the comptroller.

III. IF THE OPERATOR, is without funds of THE CORPORATION to meet disbursements of the vessel in foreign or dependency ports, and funds are there advanced by the OPERATOR, or procured from others, a commission will be allowed in accordance with the usual commissions paid in the respective ports, as certified to the United States Shipping Board by the Amer-

ican Steamship Association, and verified by the comptroller.

IV. For entering and clearing a vessel light or in ballast into and from United States ports from and to foreign or dependency ports, respectively, or into and from United States Atlantic ports from and into United States Pacific ports, respectively, a fee of $20 will be allowed. No fee will be allowed for entering or clearing vessels light or in ballast into and from United States Ports from and into United States ports other than these above mentioned.

V. If the vessel, after cargo it booked, is diverted by THE CORPORATION to a port other than that named or contemplated in the original shipping documents, no additional compensation will be paid on any increase in freight earnings resulting from such diversion, but THE OPERATOR will be paid an additional fee of $250 for performing the services incidental and necessary to the diversion.

FIFTH. Whenever THE CORPORATION may legally have the advantage of existing or future contract of THE OPERATOR for the purchase of material, fuel supplies, or equipment, it shall have the benefit thereof, provided that such contracts may be made available to the CORPORATION without unreasonably interfering with the requirements of other vessels owned or operated by THE OPERATOR.

SIXTH. THE CORPORATION shall reimburse THE OPERATOR for all disbursments properly incurred on its behalf as authorized in this agreement.

SEVENTH. All salvages shall be for the benefit of THE CORPORATION. This provision, however, shall not be construed to deprive THE OPERATOR of any right to salvage reserved to THE OPERATOR as vessel owner under any charter.

EIGHTH. THE CORPORATION shall have the right at any time to terminate this agreement as to any or all vessels assigned to the OPERATOR, and to assume forthwith control of any or all of the vessels, and to collect directly all freights, moneys, or other charges remaining unpaid. The OPERATOR, however, in such cases shall adjust, settle, and liquidate the current business of the vessels if so required by THE CORPORATION. [74]

NINTH. Upon giving THE CORPORATION thirty days' written notice, THE OPERATOR shall have the right to terminate this agreement, said termination not to become effective as to any vessel until its arrival and discharge at a United States port. THE OPERATOR shall, however, if required by THE CORPORATION, adjust, settle, and liquidate the current business of the vessel.

TENTH. THE OPERATOR Shall at the time of execution of this agreement or at any other time, if so required by THE CORPORATION, furnish a satisfactory bond in such amount as THE CORPORATION may order for the faithful and proper

discharge of the obligations and duties hereunder assured.

ELEVENTH. This agreement shall apply to the operation of all vessels assigned to THE OPERATOR, sailing from United States ports on or after the 1st day of March, 1919.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

Witness as to signature:

(Sgd.) H. NEWMAN.

By (Sgd.) H. H. EBEY,
Ass't Director of Operations.
For Director of Operations.

WILLIAMS, DIMOND & COMPANY.

Witness as to signature:

(Sgd.) GEO. S. DOADAM. [75]

By (Sgd.) E. R. DIMOND, Member of the Firm,

The Operator.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

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	900	Double Bags Sisal	90000 Lbs

The vessel shall have liberty to deviate for the purpose of saving [illegible] and shall be paid any increased cost of [illegible] insurance, if any, incurred in consequence thereof.

[illegible] 90000 lbs at $6.00 per 100 lbs

WILLIAMS, DIMOND & CO.

TWO

WILLIAMS, DIMOND & CO.

SHIPPER. MASTER OR AGENTS.

THIS BILL OF LADING WHICH CONSTITUTES THE CONTRACT BETWEEN THE SHIPPER OR OWNER OF THE PROPERTY CLAIMED AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

EXHIBIT "E."

EUROPEAN PACIFIC LINE

DIRECT SAILINGS

OUTWARD

S.S. "Effingham" (for London, Liverpool and Hamburg).....Sails Dec. 6
S.S. "Cockaponset" (for Antwerp, Hamburg and Rotterdam).....Sails Dec. 13
S.S. "West Alota" (for Hamburg, Rotterdam and Cardiff).....Dec. —

HOMEWARD

S.S. "Dulwich" (loading London).....Dec.
S.S. "Wren Katan" (loading Havre and London).....Dec.
S.S. "Dewey" (loading Bristol, Liverpool and London).....
S.S. "Orani" (loading London, Liverpool and Glasgow).....
S.S. "Cockaponset" (loading Hamburg, Antwerp and Rotterdam).....

W. W. THURSTON, Gen. European Agent

E. H. MURDY,
Agent General United Kingdom
No. 1 Poultry Ave., London, E. C.

WILLIAMS, DIMOND & CO.

Managers and Operators for U. S. Shipping Board

310 SANSOME ST., SAN FRANCISCO
Telephone Sutter 7000

EXHIBIT "F."

EUROPEAN PACIFIC LINE

DIRECT SAILINGS

— Freight only —

For European Ports

S.S. EFFINGHAM.....Sails Dec. 6
(For Hamburg, London and Liverpool)
S.S. COCKAPONSET.....Sails Dec. 13
(For Havre, Antwerp and Rotterdam)
S.S. WEST ALOTA.....Sails late Dec.
(For Hamburg, Rotterdam and Cardiff)

From European Ports

S.S. KELSEAN.....(Loading London).....Dec.
S.S. WREN KATAN.....(Loading Havre and London).....Dec.
S.S. DEWEY.....(Bristol, Liverpool and London).....(—)
S.S. ORANI.....(London, Liverpool and Glasgow).....(—)

W. W. THURSTON, Gen. European Agent
E. H. MURDY, Agent General United Kingdom
No. 1 Poultry Ave., LONDON, E. C.

WILLIAMS, DIMOND & CO.,

Managers and Operators for United States Shipping Board
310 Sansome St., San Francisco. Tel—Sutter 7000

EXHIBIT "G."

TRANSLATION of Protest Extended Before the Tribunal of Amsterdam.

On this day the twentieth of February, 1920, has appeared before Us, Dr. S. J. Carsten, Justice of the Tribunal of Amsterdam, in the presence of and assisted by Dr. H. B. van der Elat, Deputy-Recorder of the said Tribunal, Mr. George Hillier Ewart, master of the American steamer "West Aleta," who, while producing the ship's logbook on which We have on this day placed our Exhibition, has made to Us the following deposition, in the presence of the members of his crew named hereinafter, by intermediary of Mr. Jan Adrianus Pieter Byl residing at Amsterdam, appointed by Us to act as interpreter and to whom We have administered the following oath or solemn declaration: that he shall faithfully perform his duties as interpreter;

That the said ship being tight, staunch and strong, masts and pumps fitted with efficient double coats, fully provided with everything that is necessary for proper control of water, engines in good order, and consequently in a thoroughly efficient and responsible state to carry merchandise over sea, was loaded at San Francisco from the 26th December 1919 until the 6th January of this year, with a complete general cargo, bound for Hamburg, Rotterdam and Cardiff;

That on the 7th January A. M. he left San Francisco with the said ship, crew consisting of 46 members, himself included, cargo properly loaded,

located, stowed, dunnaged and secured as customary hatches closed, covered with good double tarpaulins and battened.

That they steamed through the Panama Canal and sailed from Christobol on the 21st January at 12.20 P. M.

That the sea voyage was continued without any obstacles except that he encountered bad weather in the Carribean Sea;

That on the 10th February at 2 A. M. he passed Bishop Rocks [81] at a distance of 14 miles, passed Lizzard at 6.30 A. M. at 6½ miles' distance and St. Catherine's Lightship at 8.35 P. M. at 9½ miles' distance;

That on the 11th February at 6.35 A. M. he passed South Foreland at 2 miles' distance and East Goodwin' Lightship at 7.20 A. M. at 1¾ miles' distance, where the deep sea lead was cast and they shaped course 38° true (45° by standard compass) with 7° Easterly variation and 14° Westerly deviation; At that moment the log indicated 210;

At noon the position of the ship on observation appared to be 51° 53′ 28″ Lat. N. and 2° 25′ Long. E. After the ship had proceeded 30 miles another observation was made at 2.30 P. M. in order to check course and position, when she was found to be in 52° 12′ 16″ Lat. N. and 2° 49′ 24″ Long. E.

That towards 3 P. M. the weather changed and they had to contend with strong windsqualls which grew heavier and heavier until it was blowing a strong N. W. gale and the seas became running high;

That at 8.40 P. M. on account of the heavy rolling and labouring of the ship, they put the vessel head to sea, 15° true course (24° standard) whilst the log indicated 88;

That at 10 P. M. they changed the course to E. N. E. magnetic, for fear of entering the northern minefield and also in order to be able to control the position of the ship and the current by bearing the lighthouse on the Dutch coast;

That at 11 P. M. taking cross bearings Kykduin S. E. magnetic, Eierland E. ½ S. magnetic, he had fixed the position of the ship in accordance with the observation of that position at noon at 19 miles' distance, log 107½ Course NE. magnetic had just been shaped, taking drift and tide into account;

That on the 12th of February at 1.30 A. M. he observed on the starboard bow a white flashing light showing sudden flashes of 5 seconds duration, which corresponds with the nature of Norderney [82] lightship and also an illuminated white buoy showing a glare every 7½ seconds which corresponds with the nature of buoy D of the war channel (it is customary to control all lights with a second watch with a stop-spring, which was also done in this instance;

That the course of the ship was deviated to 109° standard compass, equal to about 100° magnetic, in order to pass quite close alongside the buoy and to keep at a safe distance from the lightship;

That at 2.15 he decreased the ship's speed, as he wished further to control the position of the ship with respect to the depth of water and to take accurate soundings;

That at 2.25 when the ship was lying almost still, an accurate sounding was taken which indicated 14 fathoms. The distance performed and various nautical auxilliary means were all checked and by doing so we felt quite sure of being safely in the war channel but nevertheless we proceeded slowly into the direction of Norderney lightship, for the true course was 90° through the middle of the war channel which was deemed to contain the lightship we had in view;

That at 2.28 the ship struck what afterwards proved to be a sand ridge which projected several miles to the northward from the western end of the isle of Terschelling.

That the engines were instantly put full speed astern, but the swell also caused the ship's broadside to be swung round the engines were then put full speed ahead in order to put the vessel again bow to sea. The ship swang round fully 60°. As we were unable to get the ship any further and as she was falling off again, the engines were reversed once more, the so desired effect of which being that the ship's stern was again turned to the sea, after which the ship and particularly her stern did not take breakers any more; [83]

That shortly after being aground a radio message was despatched which was answered by the s. s. "Tillford" and likewise by a station on shore. The "Tillford" communicated that she was coming to render assistance and the station on shore advised that 2 tugs were under way to render assistance, after which we requested to send out the lifeboat,

because the position of the ship was very dangerous and she did already begin to bend badly, both afore and abaft of the midship's house. The sea was too heavy for lowering the ship's lifeboats into the water and we decided to await for the arrival of the lifeboat, at the same time working the engines thoroughly in order to prevent the broad side of the ship from capsizing.

We succeeded in attaining this end, it seemed that the ship was only aground amidships. At about 7.50 A. M. the ship gave signs of breaking up and the position became serious. The safety of the crew required all to leave the ship. This was fortunately accomplished by means of the lifeboat which landed the entire crew in Terschelling.

Shortly after landing the lookout went into the lighthouse from where the ship could be seen and it then appeared that the ship had already broken in two. According to the observation made at noon the distance performed from the position last stated, corresponded with all data stated above concerning light ships mentioned in the war channel, born by taking soundings, and the error in the prevent position of the ship can only be attributed to positive and unknown increase of the force of the drift, which drifted the ship on shore;

That the damage which has already been or may still be found to ship and cargo, has not been caused by any previously existing defect of ship, rigging, machinery or appurtenances, bad stowage or other insufficient care of the cargo, nor by the action or neglect of him, the appearer, or his crew, but must

solely be attributed to the strong winds, high seas, the labouring, pitching [84] and rolling of the ship and the big quantities of seawater that washed on board during this voyage, and to the accident described above, whereas he has used proper seamanship in every respect, lost no time nor wind, attended properly to the pumps, keeping them as dry as far as practicable and taken continuous care of a proper ventilation of the cargo.

And moreover, have appeared:

RARISON WILSON, Chief Officer,
JOSEPH HEARY JOHN DELANEY, Second Officer,
WILLIAM HEARY SHARPE, Chief Engineer,
GEORGE STANLEY KRAMER, Second Engineer,

all engaged on board the said ship during the said voyage, who have declared each one separately, but in the same tenor;

That all statements made by their master as above, are in conformity with the truth;

That they have been honest and faithful in handling the cargo, without having committed any fraud or theft and that they do not know of such a thing having been done by anybody else, either directly or indirectly.

As these depositions may and shall serve to prove any losses, disasters, or damages, and any claims whatever of the charterers of the ship, the appearers have finally requested us to be allowed to affirm their foregoing declarations by oath.

Prior to affirming the deposition by oath, ap-

peared Delaney testified not having been present at the controlling of the position, although he was on the watch, his work having required him to be engaged on the afterpart of the ship.

Thereupon all appearers have affirmed their statements by taking the prescribed oath in our hands.

In witness whereof this protest has been drawn up and after being read in the English language by the above-named interpreter and approved by the appearers, signed by the latter, the interpreter, by Us, Justices of the Peace and the above-named Recorder. [85]

(w. s.) G. H. SWART.
H. WILSON.
J. J. DELANEY.
W. H. SHARPE.
G. S. KRAMER.
J. A. P. BYL.
A. J. CARSTEN.
H. B. v. d. ELST.

A true copy of the original.

THE RECORDER OF THE TRIBUNAL OF AMSTERDAM.

Translated by

_____,

Sworn Translator, Rotterdam.

[Endorsed]: Filed Nov. 20, 1924. [86]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

NOTICE TO PRODUCE.

To Rosenberg Bros. & Co., a Corporation, Libelant Above Named, and to J. M. Mannon, Farnham P. Griffiths, and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors:

You and each of you are hereby notified to produce before the trial of the above-entitled matter the following documents, to wit:

1. Original loading tags or receipts given to shipper for all cargo shipped on the S. S. "West Aleta," Voyage 51, sailing from San Francisco, January 6, 1920;

2. All letters to and from the shipper relative to securing option for space for cargo to be shipped on the S. S. "West Aleta" and relative to booking cargo thereon;

3. Original notices or circular letters sent to shipper by Messrs. Williams, Dimond Co. relative to schedule for [87] ports of call, and date of departure;

4. Applications for insurance on cargo shipped on the S. S. "West Aleta," Voyage 51;

5. Originals of all policies issued to shipper for cargo on the "West Aleta," Voyage 51;

6. All open policies and certificates issued thereon for cargo shipped on the S. S. "West Aleta," Voyage 51;

7. Invoices showing premiums paid and certificates issued on cargo shipped on the "West Aleta," Voyage 51; and,

8. Original entry books covering open policies, in which entries relative to certificates issued thereunder were made.

IRA S. LILLICK,
Proctor for Respondent.

Due service and receipt of a copy of the within notice is hereby admitted this 24th day of December, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE.

[Endorsed]: Filed December 29, 1924. [88]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof in the City and County of San Francisco, on Monday the 29th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Court and Cause.]

No. 17,692.

MINUTES OF COURT—DECEMBER 29, 1924—HEARING.

This suit came on regularly this day to be heard. J. M. Mannon and F. P. Griffiths, Esqrs., appear-

ing as proctors for libelant and Ira S. Lillick, Chalmer G. Graham and J. Arthur Olson, Esqrs., appearing as proctors for respondent.

Mr. Mannon made statement to the Court on behalf of the libelant and introduced in evidence and read the agreed statement of facts, which was marked Libelant's Exhibit No. 1. Libelant introduced in evidence and filed its exhibits marked Nos. 2, 3, 4, 5, 6, 7 and 8.

ORDERED deposition of Walter M. Strong opened, refiled, and introduced in evidence, together with the exhibit referred to therein; and thereupon libelant rested.

Mr. Graham made a statement to the Court on behalf of respondent.

Fred A. Hooper, E. C. Gross, L. K. Grimm and W. H. Houston were sworn and testified on behalf of the respondent. Respondent introduced in evidence and filed its exhibits marked "A," "B" and "C." On cross-examination of Fred A. Hooper, libelant introduced in [89] evidence and filed its exhibits marked Nos. 9 and 10. Pending the further cross-examination of Fred A. Hooper, it is ORDERED that the further hearing hereof be continued until 10 o'clock A. M. to-morrow. [90]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof in the City and County of San Francisco, on Tuesday, the 30th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—DECEMBER 30, 1924—HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing hereof was resumed.

Fred A. Hooper was recalled and further testified on behalf of the respondent. On cross-examination of Fred A. Hooper, the libelant introduced in evidence its exhibits marked No. 11 and No. 12.

C. H. Chandler, James J. Rudden, E. F. R. DeLancy, Fred L. Doelker and Harry L. Evans were sworn and testified on behalf of respondent. Respondent introduced in evidence and filed its exhibits marked "D," "E" and "F."

ORDERED that the further hearing hereof be continued until ten o'clock A. M. to-morrow. [91]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof in the City and County of San Francisco, on Wednesday, the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—DECEMBER 31, 1924—HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing hereof was resumed.

Harry L. Evans was recalled and further testified on behalf of respondent. Alfred E. Wolff, Erik Krag and E. B. Wolff were sworn and testified on behalf of respondent.

Libelant introduced in evidence and filed its exhibits marked Nos. 14, 15, 16 and 17.

ORDERED that the further hearing hereof be continued to Friday, Jan. 2, 1925, at 10 A. M. [92]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 2d day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—JANUARY 2, 1925—HEARING (RESUMED).

The parties by their attorneys being present as heretofore, the hearing hereof was resumed.

W. J. Lane, E. B. Steward, William J. Murray and Ethel Olsen were sworn and testified on behalf of respondent. Respondent introduced in evidence and filed its exhibits marked "G," "H," "I," "J," "K"; and respondent rested.

ORDERED that the further hearing hereof be and same is hereby continued until Tuesday, January 6, 1925, at 10 A. M. [93]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 6th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—JANUARY 6, 1925—HEARING (RESUMED).

The parties and their attorneys being present as heretofore, the hearing was resumed. Libelant introduced in evidence and filed its exhibits marked Nos. 18, 19 and 20.

J. S. Jenks, R. Sciaroni and W. T. Bozeman were sworn and testified on behalf of libelant.

Respondent introduced in evidence and filed its exhibits marked "L" and "M."

Ordered further hearing continued to 10 o'clock A. M. to-morrow. [94]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 7th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—JANUARY 7, 1925—HEARING (RESUMED).

The parties and the attorneys being present as heretofore, the hearing was resumed.

H. R. Higgins, Thomas W. Smith and J. W. Jory were sworn and testified on behalf of libelant.

Respondent introduced in evidence and filed its exhibits marked "N" and "O."

Libelant introduced in evidence and filed its exhibits marked Nos. 21 and 22; and libelant rested. The evidence was thereupon closed.

ORDERED that this suit be submitted on briefs to be filed in 15, 15 and 10 days. [95]

[Title of Court and Cause.]

No. 17,693.

DEPOSITION OF WALTER MERVYN STRONG, FOR LIBELANT.

BE IT REMEMBERED: That on Monday, December 15, 1924, pursuant to stipulation of counsel, at the offices of Messrs. McCutchen, Olney, Mannon & Greene, in the Balfour Building, in the City and County of San Francisco, State of California, personally appeared before me, Frank L. Owen, a notary public in and for the City and County of San Francisco, State of California, authorized to take acknowledgments of bail and affidavits, etc., Walter Mervin Strong, a witness called on behalf of libelant.

J. M. Mannon, Jr., Esq., and Edwin S. Pillsbury, Esq., appeared as proctors for the libelant, and Ira S. Lillick, Esq., and C. G. Graham, Esq., appeared as proctors for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of the above-named witness may be taken *de bene esse* on behalf of the [96] libelant at the office of Messrs. McCutchen, Olney, Mannon & Greene, in the Balfour Building, in the City and County of San Francisco, State of California, on Monday, December 15, 1924, before Frank L. Owen,

a notary public in and for the City and County of San Francisco, and in shorthand by E. W. Lehner.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking of said deposition, and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [97]

WALTER MERVYN STRONG, called for the libelant, sworn.

Mr. MANNON.—Q. State your full name, please, Captain. A. Walter Mervyn Strong.

Q. Your occupation? A. Master mariner.

Q. How long have you been going to sea, Captain?

A. I spent my fifteenth birthday at sea, and I have had my fortieth birthday.

Q. How long have you been a master mariner?

A. Since 1915; I was captain of the "Californian," made captain of the "Californian" in 1915.

Q. What experience, if any, have you had in navigating the North Sea?

A. Well, the North Sea route, during the war I ran to the London bunkers, and then after the armistice I ran for the Food Administration, that

(Deposition of Walter Mervyn Strong.)

was in April and May, and I took a load of flour from St. Nazaire to Danzig, and that is when we had to take all of the swept channel.

Q. During the war period, Captain, of what vessel were you in command?

A. I was in command of the "Kerowlee"; you see when I first took her I was running for the Kerr Line, from Galveston to Havre, and then I was requisitioned in Havre by General Pershing, it was November 28 or December 28, 1918, I think it was—I don't know whether it was November or December; it was somewhere around the 28th.

Q. Then after that period how did you operate?

A. Then I was sent to Barry Island and put in the Cross Channel coal trade; I run for the Army, and then I run for the Navy, the Belgian Relief, and then, last of all, for the Food Administration.

Q. What ports on the English side of the Channel, if any, were you making at that time?

A. That particular time I went to [98] Barry Island for orders, and from there I would get orders to go to Cardiff, Penarth, Barry Docks or Swansea, that was for coal purposes, and then I would go to Brest for orders, and from there I would be sent to St. Nazaire, Nanee, La Pallice, and the next one south of that, Bordeaux.

Q. When did you finish your work, Captain, in the war, for the Navy or Army?

A. When I got out of the war.

Q. When was that?

A. The last voyage when the ship was turned

(Deposition of Walter Mervyn Strong.)

back in Norfolk, and that was when I was relieved from the Navy, that was on August 11, 1919.

Q. Is that Norfolk, Virginia?

A. Yes; that is when I was turned back to the owners.

Q. Then in August, 1919, what ship, if any, did you take command of?

A. I kept command of my ship.

Q. The same ship? A. Yes.

Q. Then what voyages after that did you make with that ship?

A. After the time that we were turned back I went to New York, and went to Morse's drydock, and we were there about a month reconditioning, and then I went in the New York-Hamburg trade for the Kerr Line and the Hamburg-American Line, combination, and I sailed from New York about the middle of September, 1919, and I was back—the voyages took from nine to ten weeks—and on my second voyage I arrived in Hamburg in December, I don't know whether it was the 22d or 23d.

Q. December, 1919, that was?

A. 1919, and I sailed from Hamburg about the middle of January.

Q. Of what year?

A. That was the middle of January, 1920; and then when we came back to New York, I think on that voyage I was something like 22 days getting over.

Q. So that after you left the Army or Navy service during the [99] war, how many trips into

(Deposition of Walter Mervyn Strong.)

the North Sea did you make with the "Kerowlee" up to say the month of February, 1920, if you know?

A. Three, that is, up into the Heligoland Bight.

Q. On the first of these voyages, where did you go?

A. On the first of the voyages, when I entered the North Sea, when we first passed into the Straights of Dover, we stop for examination by the British examination boat, for orders regarding notice to mariners through the mine fields, and on my first voyage, that was in April when I went up that way, we had to go through Downs, in through the Edinburgh Channel, and out through the Black Deep.

Q. That was April, 1919? A. Yes.

Q. Go ahead with your statement as to where you went from Downs?

A. Then when we came out of the Black Deep we went up, then, to Orford Ness, then we took that swept channel that brought us down around the Hook of Holland, then we used to follow the Dutch coast I think within four or five miles up to, I forget the name of the place, I could tell by looking at the chart—Ymuiden—we followed the Dutch coast up to there, and then from there we came out to Haaks Lightship, and then from Haaks Lightship we ran up to South Dogger Bank Lightship, and there is where the German light cruiser and torpedo boats lay, and they took us free through

(Deposition of Walter Mervyn Strong.)

the mine field and brought us down to Heligoland.

Q. What direction were you going then?

A. Going from South Dogger Bank Lightship we ran northeast up through the swept channel to Buoy No. 5a, then we steered about east, southeast, following the swept channel to Buoy No. 2, and then from there southeast to Heligoland, and at Heligoland the German pilot left, the admiralty pilot left, and I took an Elbe pilot into Brunswick, and then the Kiel Canal pilot took you through.

Q. State when it was that you made the trip that you *just* have [100] just described?

A. Now, that was when I was turned back to the owners; then they had cleaned up some of this field here; you can see by the other mine chart, they had cleaned up some of this mine field, here. This is an old chart, they had cleaned up some of this here.

Q. Before you get to that, I want to find out about what time you made the voyage you have just described. A. That one was in April.

Q. 1919? A. 1919.

Q. What port did you make on the German side at that time?

A. My first one was the Elbe River, I went through the Elbe to come up to Danzig.

Q. To get into Hamburg you likewise came into the Elbe River? A. Yes.

Q. Did you come back a different route?

A. No, I came back over the same route.

(Deposition of Walter Mervyn Strong.)

Q. When next, if at all, did you go into the North Sea with your ship?

A. Then I sailed about the middle of September —that was about the first part of October I came back, running for the Kerr Line, and New York-Hamburg Line.

Q. On what ship?

A. The same ship, the "Kerowlee," and I stopped at Downs for examination, and then that trip we passed up inside of the Sands—they had cleaned up this mine down here; I passed up inside of the Sands, and then from the Sands we cut across here, and this mine field—Buoy No. 6 was the entrance to the general mine field, and there there was this German admiralty pilot who took us through this new mine field, up to the Elbe, right along the north coast of Germany; homeward bound, that voyage, the German admiralty still maintained that free pilotage. [101]

Q. When was that you came out of Hamburg on that voyage, about?

A. About the latter part of October.

Q. 1919?

A. Yes. On the next voyage, when I arrived in the North Sea in December I came up then and I could go inside or outside of the Sands, and I took the inside, and then I ran up here just the same through the mine field to make the Terschelling Lightship, and they had done away with the Government pilot, that is, the admiralty pilot, and com-

(Deposition of Walter Mervyn Strong.)

ing out that voyage I took a civilian North Sea pilot and landed him at Dover.

Q. Where did you go on that voyage you went into the North Sea in December, 1919, on the German Coast, if anywhere? A. Into Hamburg.

Q. And about when was it that you went into Hamburg, if you know?

A. I went into Hamburg the first voyage in October, and on the second voyage in December.

Q. Both in 1919? A. 1919.

Q. When did you leave Hamburg with your vessel?

A. The last time I left Hamburg was about the middle of January, 1920.

Q. Where did you go with your vessel out from Hamburg? A. New York.

Q. From Hamburg to New York? A. Yes.

Q. And coming out of Hamburg what course did you follow—will you describe it in detail from the map, Captain?

A. You see, on these voyages we used to have to run down to a few miles off that buoy off Norderney.

Q. Captain, start right out at Hamburg and state how you started.

A. From Hamburg we came out through the Elbe, right by the buoy, that is where the river pilotage ceases, and then from there I shaped a course right straight down to the buoy off Norderney, one mile off of that buoy, and from there I shaped a course [102] through the buoyed channel through the mine field, and at that time they had not cleaned

(Deposition of Walter Mervyn Strong.)

away any of this mine field here; this was only three miles wide, that channel.

Q. Where is that place that you are now pointing to with relation to Terschelling Island?

A. Here is Terschelling, right here.

Q. What direction is it from Terschelling Island, the course that you are pointing to?

A. Well, we call this here, coming out of Heligoland Bight, going along the north coast.

Q. All I want you to identify, Captain, is, if you will, the course that you are now describing with reference to Terschelling Island.

A. From the Elbe 1 I shaped a course to the gas buoy north of Norderney, and from there I shaped a course to hit the buoyed channel through the mine field, into Terschelling, and followed that buoyed channel to the edge of that mine field, and from the mine field I shaped a course right down for the Straits of Dover.

Mr. MANNON.—Now, in connection with the testimony of this witness we offer in evidence the map that he has been using, and ask that it be marked Libelant's Exhibit Strong 1.

(The map was marked Libelant's Exhibit Strong 1.)

Q. Can you read the name of that map for me, there?

A. "Southern Part of the North Sea, Mine-Free Passage."

Q. Will you read this legend at the bottom of the map, merely for identification?

(Deposition of Walter Mervyn Strong.)

A. "Given out by the Berlin Admiralty, 1920."

Q. This plat, that has been marked Libelant's Exhibit Strong 1, where did you get it?

A. I bought it in Hamburg.

Q. Have you ever used it?

A. I have laid my course on it.

Q. Just tell me, Captain, when did you use that map? A. In December.

Q. 1919? A. And January, 1920. [103]

Q. That is the map, in fact, that you used in coming out of Hamburg?

A. Yes, every trip we used to get the latest one.

Q. Now, I show you this map which is marked "Supplement to the Pilot Chart of the North Atlantic Ocean, Washington, D. C., Published February, 1920, at the Hydrographic Office, Under the Authority of the Secretary of the Navy," and ask you if you have seen that chart before? A. Yes.

Q. Will you state what that is?

A. These were issued, I think, monthly.

Q. Where did you get that one?

A. You got them from the routing officer, he gave them to you.

Q. Where?

A. Like in New York, I would go up to get the latest notices to mariners, and they would give these out.

Mr. MANNON.—I will offer that document in evidence in connection with the testimony of this witness, and ask that it be marked Libelant's Exhibit Strong 2.

(Deposition of Walter Mervyn Strong.)

(The map was marked Libelant's Exhibit Strong 2.)

Q. What is this chart that you have produced here? A. We lost one of our own ships here—

Q. I want to get at the identification of these charts. Just what is this chart that you have before you?

A. That is the southerly sheet of the North Sea.

Q. Does it say on that when it was published?

A. Yes, August, 1920, latest correction.

Q. When you went into Hamburg in December, 1919, and when you came out of Hamburg in January 15, 1920, what was the condition of the water that you passed through with regard to floating mines?

A. They were worse than Heligoland Bight, and it depended on the direction of the wind; if they had a northwester for a few days, they would be all over Borkum Reef into the Elbe, and under conditions [104] like that we used to try to make that run in the daytime.

Q. Have you personally ever observed any mines there in December, 1919, or January, 1920?

A. Oh, yes; I could not say offhand how many; it would be according to the tide, and the way the wind had been blowing; when you ran into them you might find one or two together, and you would see sometimes one a watch, or sometimes six or seven a watch, that is the way it run.

Q. How long is a watch? A. Four hours.

Q. Now, on the voyage coming out of Hamburg

(Deposition of Walter Mervyn Strong.)

about January 15, 1920, that you testified to, can you state approximately how many floating mines you saw? A. In 1920?

Q. Yes.

A. You see, they broke adrift more after the winter months and the storms; when I came out in 1920, how many I saw I don't know.

Q. Can you state approximately, for the benefit of the record?

A. Those two trips the "Kerowlee" made over there and back again, I have seen not less than, I can honestly say, than between 6 and 8 mines on a passage each way over there.

Q. What were the conditions with regard to the Straits of Dover in connection with mines about January of 1920, if you know?

A. They had cleaned up, they had finished in January, 1920, they had cleaned up, but you could not anchor; they were swept, but you could not anchor; you could go right through in January—no, wait a minute—yes, in January the Straits of Dover were clear, you could run right straight down through.

Q. With regard to the entrance to Cardiff, can you tell whether or not there was danger from floating mines there in the year 1919, the latter part, and the early part of 1920?

Mr. GRAHAM.—I object to the question on the ground the [105] captain has not testified he was in Cardiff.

A. Before I came home, when I came back from

(Deposition of Walter Mervyn Strong.)

Danzig, I was over to Rotterdam, I went to Rotterdam and I laid there a week for orders, and then I got orders to go to Cardiff to get bunkers, and I was sent to St. Nazaire to load ordnance home for the United States.

Mr. MANNON.—Q. That trip that you have just described is the one you made in about April, 1919, you say?

A. Wait a minute. I will have to go back the other way. I have got to guess on this. I was in England during that bank holiday, whenever that was.

Q. Will you fix that as nearly as you can, the time you went into Cardiff, particularly, we are interested in.

A. Those bank holidays, it was somewhere around the middle of May.

Q. It was around the bank holidays of 1919?

A. Of 1919?

Q. What was the condition into Cardiff with regard to floating mines at that time?

Mr. GRAHAM.—I object to the question on the ground it is too remote; he has not definitely stated yet he was in Cardiff in April or May. He has merely stated on a bank holiday, but you have to bring it closer than that.

Mr. MANNON.—Q. Fix it as close as you can.

A. I can say within a few days of the last of May I was in Cardiff.

Q. In 1919? A. Yes.

Mr. GRAHAM.—I object to this further on the

(Deposition of Walter Mervyn Strong.)

ground that in the stipulation it is stipulated that this vessel would have arrived in Cardiff around the 1st of February, 1920, and the time is too remote.

Mr. MANNON.—Q. The time that you were in Cardiff in May of 1919, were there any floating mines there or thereabouts, that you saw? [106]

Mr. GRAHAM.—The same objection.

A. I did not see any on my voyage.

Mr. MANNON.—Q. That was the last time you were in Cardiff?

A. That was the last time I was in Cardiff.

Q. Now, when, prior to February of 1920, were you last in Rotterdam with your ship?

A. I went there five days after the armistice for orders, and then I got orders, and I had to go back to St. Nazaire to load flour for the Food Administration, that is, when I went to St. Nazaire.

Mr. GRAHAM.—I object on the ground it is also too remote. In this case the record shows the vessel arrived here sometime in the middle of February, 1920.

Mr. MANNON.—Can you fix approximately the time, as nearly as you can, that you were in Rotterdam the last time prior to February, 1920?

A. Prior to 1920? 1920 I was running for my own company. I am talking about the Army time now.

Q. I want to get the last time you were in Rotterdam before February, 1920, as near as you can remember. A. The latter part of March, 1919.

Mr. GRAHAM.—The same objection, too remote.

(Deposition of Walter Mervyn Strong.)

Mr. MANNON.—Q. What was the condition of the entrance to Rotterdam?

A. I could tell by my naval orders.

Q. What was the condition of the entrance to Rotterdam with regard to floating mines the last time you were in there in March, 1919?

Mr. GRAHAM.—The same objection.

A. They had not cleaned up the mine fields, the British mine fields, at the Straits of Dover, that is, in the southerly part.

Mr. MANNON.—Q. By the way, where have you been running to in the North Sea since February, 1920, if anywhere? [107]

A. Since then, up to date?

Q. Yes.

Mr. GRAHAM.—I object on the ground it is irrelevant or immaterial where he has been running since the loss occurred.

A. I have been running to Antwerp, Rotterdam, Bremerhaven, Hamburg.

Mr. MANNON.—Q. What ship were you on, Captain?

A. In the latter part of February I was transferred from the "Kerowlee" and given command of the ship I have now.

Q. What is her name? A. "Kermit."

Q. What year was it, February of what year?

A. I had to wait about two weeks for this ship to come in, and I took charge of this ship on March 5, 1920.

Q. What year? A. 1920.

(Deposition of Walter Mervyn Strong.)

Q. March 5, 1920? A. Yes.

Q. In what trade have you been operating with this ship since March, 1920?

A. We went on the New York-Hamburg trade, I made two trips, and then went in the Hamburg-South American trade.

Q. So that you have been running into the North Sea and into Hamburg practically every trip since then? A. Every trip since then.

Q. When did you arrive at San Francisco?

A. This voyage?

Q. Yes.

A. I am southbound; I arrived here this morning southbound.

Q. When are you leaving San Francisco?

A. I am probably leaving to-morrow night for Hamburg, via Los Angeles.

Q. Now, Captain, when was the mine field planted in the North Sea?

Mr. GRAHAM.—Objected to on the ground that the captain does not know when they were planted; he did not plant them himself, or did not take part in planting any. [108]

A. I did not take part in planting any; no.

Mr. MANNON.—Q. You were running into the North Sea before the war, weren't you?

A. No, not before the war.

Q. Was it during the war that you first began to operate in the North Sea?

A. Only temporarily across the Straits one trip. The most of my trade was cross channel.

(Deposition of Walter Mervyn Strong.)

Q. At that time, were there mines where you were traveling across the North Sea?

Mr. GRAHAM.—He has not testified he was traveling across the North Sea. He says he was crossing the channel.

A. You can't call that the North Sea where I went to cross the Straits of Dover.

Mr. MANNON.—Q. That is the southerly entrance to the North Sea? A. Yes.

Q. Now, you have stated, Captain, that in 1919, when you were on your voyages and entered the North Sea, you were stopped at the Downs. What did you stop there for?

A. For the examination boat, for notice to mariners with regard to the mine fields.

Q. Regarding mine fields where?

A. In the North Sea.

Q. If you know, who maintained that station that you stopped at? A. The British Admiralty.

Q. What class of information, generally speaking, did you get on those voyages, what kind of information?

A. You used to get a chart, a little chart, with buoys, and your courses, and then instructions to masters, advices on traveling through the mine fields.

Q. Now, you say they told you of the buoys. What were the buoys for, do you know?

A. When we got up to the mine field, they had the swept channel buoys.

(Deposition of Walter Mervyn Strong.)

Q. That is to say, you followed the course of the buoys?

A. Followed the course of the buoys. [109]

Q. As a matter of fact, that was the way the entrance was shown into Hamburg?

A. Into Hamburg, yes.

Q. How wide was that swept channel in 1919, if you know?

A. In 1919, the buoys were supposed to be the center, and they swept about a mile and a half each side.

Q. That mile and a half was kept free of floating mines? A. It had been swept free.

Q. And outside of that, there was danger of floating mines?

A. That is, it was free of moored mines.

Q. You spoke of taking on a German admiralty pilot during 1919 on your voyages from the North Sea, going into the River Elbe, and Hamburg. What did you take that pilot on for, Captain?

A. Through the German mine field.

Q. That is to say, he knew where the mine fields were, and you did not, as captain of the ship?

A. Yes. That was free, that was a German admiralty pilot.

Q. Now, were there any vessels lost in the North Sea on account of floating mines, after the war, to your knowledge?

Mr. GRAHAM.—I object to that on the ground it is only hearsay.

(Deposition of Walter Mervyn Strong.)

A. We lost one of our own ships, the company lost one of our own ships while it was over there.

Mr. GRAHAM.—The same objection.

Mr. MANNON.—Q. What was the name of the ship, Captain? A. The "Kerwood."

Q. When was the "Kerwood" lost?

Mr. GRAHAM.—The same objection.

A. That was in the winter of 1920.

Mr. MANNON.—Q. About what time?

Mr. GRAHAM.—The same objection, and on the ground that if [110] the captain was not on board the vessel, it is purely hearsay, and seeking by indirection to put into the record something that could not otherwise be directly put in by this witness.

A. She was a ship that followed me on this schedule.

Mr. MANNON.—Q. Followed you when you went in in December, 1919?

A. We had these eight ships on that run; we started with these eight Austrian ships they all began with "Ker"; she was the one following me.

Q. How far was she behind you in time Captain, if you know?

Mr. GRAHAM.—May it be stipulated that the same objection may run as to all of this line of questions?

Mr. MANNON.—Yes.

A. I can't remember now what kind of schedule we did keep.

Q. Now, how do you know the "Kerwood" was lost?

(Deposition of Walter Mervyn Strong.)

A. I saw her captain, and he told me about it.

Mr. GRAHAM.—The same objection, all the way through.

Mr. MANNON.—Q. What is this map that you have produced here now, Captain? Can you identify that for the purpose of the record?

A. North Sea, Southerly Sheet.

Q. At the bottom, here, will you read that notation into the record?

A. Extensive corrections, May, 1918, to August, 1920.

Mr. MANNON.—In connection with the testimony of this witness, we offer this map in evidence and ask that it be marked Libelant's Exhibit Strong 3.

Mr. GRAHAM.—For what purpose is the map being offered in evidence?

Mr. MANNON.—We offer it for the data particularly that is published on it, in connection with the wrecks that I will have the witness point out.

Mr. GRAHAM.—In the form of the offer as it is made, the [111] chart being offered for the sole purpose of indicating the wrecks thereon designated, will you state before examining the witness whether the marks of the wrecks are marks that have been put on the chart by the witness, or by whom they have been put on the chart?

Mr. MANNON.—We do not want it to be considered that we are making the offer solely for the purpose of showing the wrecks. I want to ask this witness about the wrecks that are indicated on it,

(Deposition of Walter Mervyn Strong.)

and we offer the map for all of the information which is given in connection with the North Sea; I propose, however, to ask this witness about the wrecks thereon indicated.

Mr. GRAHAM.—The reason I asked the question was to point the objection we have made to the witness' testimony with reference to what, on its face, could only be hearsay, and I would like to know whether the marks of the wrecks that are indicated upon the chart are marks of wrecks that have been put on by the captain, himself, or by whom.

Mr. MANNON.—I think not. I think they are put on by the authorities who issue the chart.

(The chart was marked Libelant's Exhibit Strong 3.)

Mr. GRAHAM.—Q. Can you tell us, Captain?

A. I can show you the difference.

Q. Can you tell us who made the marks of the wrecks, how the wrecks are indicated on the chart?

A. I could show you the difference between my corrections and the printer of the chart.

Mr. MANNON.—Q. Then printed on the chart are points which designate places where wrecks have occurred?

A. For instance, the chart is sent ashore and corrected every trip. For instance, the chart is published and every wreck is put on, but as they keep coming in, you send the chart ashore and get it [112] corrected.

Q. Who corrects them?

A. This one has been in to the office in Hamburg.

(Deposition of Walter Mervyn Strong.)

and he puts them in ink, and the Hydrographic Office puts on some; when a light is changed, or a buoy is changed, they take it off; you can tell the difference between my correction and theirs.

Q. Now, Captain, will you point out in the North Sea, near to Terschelling Island, any wrecks that are indicated on the map as published?

Mr. GRAHAM.—I object to that on the ground it is immaterial, irrelevant and incompetent.

Mr. MANNON.—It is merely to explain the map.

Mr. GRAHAM.—The map will speak for itself.

A. You see, all of these marks are original; you can see that.

Q. In and about Terschelling Island, will you point out a particular wreck?

A. That is the original print, there is a mark.

Q. Just a minute, Captain. I have got to get these things one at a time.

Mr. GRAHAM.—I object to all of this testimony as irrelevant. The map will speak for itself; if the map is introduced for the purpose of showing the wrecks which are there marked, the captain's testimony is not relevant.

Mr. MANNON.—I think Mr. Graham is correct about that. What I want to do is to have the witness point out the different wrecks.

Mr. GRAHAM.—The captain has not testified he has seen any of these wrecks shown on the map, or that he knows anything about them.

The WITNESS.—I saw that buoy every trip

(Deposition of Walter Mervyn Strong.)

up until recently; I do not see it now. This is the "West Arrada."

Mr. MANNON.—Q. When was the "West Arrada" lost? [113]

A. That was in the winter of 1920.

Mr. GRAHAM.—I object on the ground it is hearsay.

Mr. MANNON.—Q. What does the map show with regard to that?

Mr. GRAHAM.—I object on the ground it is irrelevant. The map will show for itself.

A. It shows its charted position when the chart was published.

Q. Does it show the cause of the loss?

A. No, it does not.

Mr. GRAHAM.—I object on the further ground that there is no indication upon the chart as to the date or dates when the wrecks occurred, and that on the face of the chart offered, dated, as it is, September 17, 1920, the Court could not draw any conclusions from the chart that would be in any way within the issues of the case, too remote in time, and not connected.

Mr. MANNON.—Q. Now, refer to the map that has been offered in evidence here as Libelant's Exhibit Strong 1: Will you state to what extent, if at all, you have relied upon that map in navigating your own ship in the North Sea and into Hamburg?

A. I did not navigate the ship by that. That was a guide.

(Deposition of Walter Mervyn Strong.)

Q. What did you use it for?

A. I used it as a guide through the mine fields, but particularly for these buoys.

Q. So that this particular chart in question is one that you, yourself, have used? A. I have used.

Q. In making your way through the North Sea with a ship? A. Yes.

Q. And you used it particularly to discover the location of the mine fields and to avoid them?

A. And to avoid them, yes, and we also plotted these from the hydrographic chart onto our own chart.

Q. When you say you plotted these, what are you referring to, Captain?

A. We put these buoys on; occasionally they drift, and then in the notice to mariners that come out again, they say the [114] buoys have drifted so far off, and we plot them on our own chart.

Q. What do you have to do with getting the buoys in the right place in going through the mine fields?

A. When we get the latest notice we correct our charts to where they are; we have got to run through them.

Q. You correct your own charts?

A. Yes; sometimes we go by in the foggy weather and we do not find them.

Q. Now, the first time in 1919 that you went through the North Sea, will you indicate on this chart, Strong's Exhibit 1, where you went with reference to the mine fields, and into the Kiel Canal?

(Deposition of Walter Mervyn Strong.)

I want you to indicate this only with regard to the mine fields that are indicated in pink on the chart.

Mr. GRAHAM.—What is the date of that?

Mr. MANNON.—That is the voyage to Danzig he made about April, 1919.

Mr. GRAHAM.—I object on the ground it is too remote.

A. From the Downs, where I got my latest instructions from the admiralty examination boat, and boarded by a British pilot, entered Edinburgh Channel and came out the Black Deep, coming up to Orford Ness, and there the British pilot left; from Orford Ness we followed the swept channel, down to Hook off Holland, and from the Hook off Holland I followed the Dutch coast about four miles off the coast up to Ymuiden, and from this position we left the coast and shaped a course for Haaks Lightship, and from Haaks Lightship we run for buoy No. 6, the southwestern entrance of the German mine field, and then followed the buoyed channel up to South Dogger Bank Lightship, and there we met the German cruiser, and they put an admiralty pilot aboard, and we were steering northeast, approximately, up to No. 5 gas buoy, following the swept channel, and from No. 5 buoy we steered a [115] southeasterly course down to Heligoland, where the admiralty pilot left us, and the Elbe River pilot came aboard, and took us into the Kiel Canal.

Mr. GRAHAM.—We move that the answer be stricken out as not being material to any of the

(Deposition of Walter Mervyn Strong.)

issues in this case, entirely incompetent, irrelevant, and what courses the captain pursued in any voyage in April, 1919, can in no way help the Court in any way to solve the issues of this case.

Mr. MANNON.—The next time, the second voyage that you made through the North Sea and into the Elbe River, you went up through the Straits of Dover, and where did you go at that time?

A. That was running back for my owners, through the Downs.

Mr. GRAHAM.—Q. When was this voyage that you now are about to give us?

A. The one I came back on now?

Q. Yes.

A. That is the one I made back for the Kerr Line, the middle of September, I left New York, and in the middle of October, 1919, I was in Hamburg.

Mr. GRAHAM.—I would like the same objection entered to that question that we have entered to the other question.

Mr. MANNON.—Yes. Proceed with your answer.

A. On my second voyage in October through the North Sea I ran up to the swept channel off Terschelling, and at the entrance to Buoy No. 6 we met the admiralty pilot, and they put a pilot on board, and he took me to the Elbe River.

Mr. GRAHAM.—I move to strike the answer out on the same grounds on which we made the other motion.

(Deposition of Walter Mervyn Strong.)

Mr. MANNON.—Now, from Buoy No. 6 will you describe your course into the Elbe, Captain?

A. I was piloted by the German pilot through the swept channel around Terschelling and down to the Gas Buoy off Norderney, and to the Elbe. [116]

Q. About what direction was it you went in going from No. 6 Buoy?

Mr. GRAHAM.—The same objection.

A. From Buoy No. 6 I was steering approximately northeest up to Buoy 9, through the swept channel, and from Buoy D at the turn, easterly courses into the Elbe.

Q. What you have referred to as No. 6, is that marked?

A. It don't show on this one, here; there used to be a 6; there is where they began cutting them off. You see, here, 1, 2, 3, 4, and down to 5—they have cut that off.

Q. What is the difference between that course you took into the Elbe and the course you took into the Elbe earlier the same year?

A. Earlier the same year I took the Dogger Bank.

Q. You took a course that is much more northerly? A. Much more northerly.

Q. What was the reason for the change in course?

A. They had not started sweeping operations yet.

Q. They had opened the channel north of Terschelling Island about the time of your second trip in October, 1919?

A. These channels—that is the German mine field there; the Germans had never planted any mines

(Deposition of Walter Mervyn Strong.)

in here; they were British, and they had to sweep them.

Q. Now, you are indicating the course on the chart that you took on your trip of October, 1919, are you?

A. Yes; you see, this is the German mine field.

Q. That is the space that is indicated on the chart in pink, the German mine field?

A. Yes; the Germans came over and laid mines in the British waters, and the British came over into the Germans' and laid them here, and they would sweep, and the next morning it would be the same thing; but the only trouble through here was the floating mines. [117]

Q. That is, the trouble with the floating mines was in the course north of Terschelling Island shown on the chart? A. Yes.

Q. When you made the trip into the North Sea and into the Elbe in December, 1919, you took the same course that you took in October, 1919, didn't you? A. Yes, the two Kerr Line trips.

Q. Then when you came out of Hamburg with your ship in 1920, about the middle of January, as you testified, you came out on the course that lays just north of Terschelling, didn't you?

A. Yes.

Q. Were there buoys all along that course?

A. Each trip they had been cutting them off more.

Q. What do you mean by "cutting off more"?

A. This mine field used to come away down to here; they cut off this first, and cut off this, and

(Deposition of Walter Mervyn Strong.)

chopped this off, and then they had some more off, they kept cutting them off.

Q. That is to say, on your first voyages in 1919, into the North Sea, the mine fields were much more extensive, but they were being cleaned up?

A. Yes.

Mr. MANNON.—That is all.

Cross-examination.

Mr. GRAHAM.—You testified that in December, 1919, you made a trip in and out of Hamburg, and that you followed the coast of Holland past Terschelling all of the way up to the mouth of the Elbe, is that correct?

A. No, you have got that a little twisted. That was not December.

Q. That was not in December? A. No.

Q. What was the route that you took in December?

A. In December I took the course around Terschelling; you are talking of the one in April or May, when I went to Danzig, when I followed the coast of Holland. [118]

Q. Give us the route that you took up the channel into the mouth of the Elbe in December?

A. In December?

Q. Yes.

A. From the Straits of Dover I ran over to make the Haaks Lightship, and to come up here to make No. 6 at the entrance of the swept channel, and there the admiralty pilot piloted me through.

Q. How far north did he take you?

(Deposition of Walter Mervyn Strong.)

A. He didn't take me north, he just took me, after we got through that mine field off Terschelling, that swept channel, and he took us right straight through.

Q. You followed the shore from then on to the mouth of the Elbe?

A. We never seen any shore, it was all foggy that time of the year.

Q. How far off shore were you?

A. I will look at the chart.

Q. About how many miles off shore, approximately?

A. Approximately ten or fifteen miles; off Terschelling,—

Q. Then did you follow the coast from then on up to the mouth of the Elbe?

A. No, you follow the buoys of the swept channel.

Q. That was about ten miles offshore all the way up to the mouth of the Elbe?

A. No; off Terschelling it was off about 25 miles, and then it comes in at Norderney, to about ten miles of the shore line, eight or ten miles of the shore line.

Q. That was all swept in there?

A. That was swept in there.

Q. Free of mines?

A. Free of moored mines.

Q. Did you ever see any floating mines in there during this trip? A. Yes.

Q. Where did you see them?

A. I saw them all over the North Sea.

(Deposition of Walter Mervyn Strong.)

Q. I am asking you where you saw floating mines on this particular route?

A. The center of them was Borkum Reef Lightship.

Q. Where is that, approximately?

A. Borkum Reef, that is where [119] it is.

Q. Where, in reference to Terschelling, say?

A. It is north of Borkum Reef—it is northeast of Terschelling—it is between Terschelling and Norderney.

Q. That is after you pass Terschelling, is it not?

A. Yes.

Q. Did you see any floating mines before you got to Terschelling on this trip?

A. On this trip, no.

Q. How many mines did you see off Borkum Reef on that trip?

A. Off of Borkum Reef that trip I had that northwest gale.

Q. This was the trip in December, 1919?

A. That is the trip I had a northwest gale, and I began to run into them at Borkum Reef and from there to Norderney Lightship, I must have seen about eight that trip.

Q. Can you state with any degree of accuracy that you saw eight or ten?

A. Say eight, that is nearer to it.

Q. How far off was the nearest one of those eight?

A. About six o'clock that night, about four feet from No. 2 hatch, when I saw it.

(Deposition of Walter Mervyn Strong.)

Q. You did not see any around Terschelling Island, at all?

A. I would not say then; it was just getting dark.

Q. Did you see any floating mines around Terschelling Island on this trip?

A. Not that trip, the wind was northwest, and they would blow further up in the bight.

Q. In other words, with a northwest wind they would blow up in the bight, and there would be very few around Terschelling at all, floating mines?

A. There would be less than there would be in the bight.

Q. So that in your estimation, then, your greatest danger was off the mouth of the Elbe River?

A. No, you are out of it then.

Q. Where was it, Borkum Reef?

A. From Borkum Reef to Norderney— [120] really, from Terschelling to Norderney was the worst place.

Q. You say you saw about eight mines.

A. About eight mines that trip.

Q. You could not confine it to any specific number? A. No, that is a long time ago.

Q. Now, as a matter of fact ,aren't you just guessing about how many mines you saw?

A. Well, one watch would see two or three, and the next watch see five or six.

Q. Did you see any, yourself?

A. Personally, yes, I did not leave the bridge.

Q. Have you any record of having seen any?

A. No, not now.

(Deposition of Walter Mervyn Strong.)

Q. Just your memory? A. Just my memory.

Q. It is a pretty long time ago, is it not?

A. It was that time.

Q. Your memory is not very clear on that, is it?

A. I will never forget them, you never forget your feeling there.

Q. What feeling was it that you will never forget, the mines?

A. Running through them in the night-time.

Q. Were you ever on a ship that ran into a floating mine?

A. Not hitting one, no.

Q. Did you ever run into one? A. No.

Q. Wasn't that route up the channel and past Terschelling Island, which you have just described, up to the mouth of the Elbe River pretty well used at that time by ships going into Hamburg?

A. No, it was not.

Q. Didn't you testify that that route was opened up, and that you took a route very similar to that in September of 1919?

A. No, you are too far back. I only left New York then.

Q. When did you make this second trip that you testified about?

A. The second trip, I arrived in Hamburg either December 22 or 23. [121]

Q. When did you make this third trip that you have testified about, the trip that we have been calling the December trip.

(Deposition of Walter Mervyn Strong.)

A. Hold on now; I am calling that second trip the second trip of the Kerr Line; that was my third trip in.

Q. I want to know did you make a trip in there in September? A. Not in September, no.

Q. When was that trip then?

A. In October I was in the Heligoland Bight, I was up in the North Sea.

Q. Did you see any floating mines on that trip?

A. Yes.

Q. Where did you see them?

A. That trip I met them further out.

Q. Further out in the channel, you mean?

A. Yes.

Q. That is in the southern part of the North Sea?

A. No, that was at the entrance; I did not see so many the first trip as I did the second trip.

Q. This second trip, is that the December trip?

A. That is the December trip.

Q. You saw more that trip?

A. Yes; from the gale, which would break them adrift.

Q. You ran into a northwest gale, you say?

A. I had a northwest gale, yes.

Q. Have you ever been up in that region in January or February?

A. I came out of there in January.

Q. When did you pass Terschelling Island, in January?

A. That was about the middle of January.

(Deposition of Walter Mervyn Strong.)

Q. What is the prevailing wind about that time in that area?

A. Well, a gale comes up and passes over, and it is all according to the wind, north or south, the direction of the wind.

Q. Is it a northeast or southeast wind, or what?

A. The northwest wind is your worst wind.

Q. Is that the prevailing wind in January?

A. The northwest gale, [122] yes.

Q. What is the prevailing wind in February?

A. All the winter months they have northwest gales.

Q. Have you ever been up there in February?

A. Yes.

Q. When were you there in February?

A. I have been running there ever since.

Q. Since the war? A. Yes.

Q. Since this period you spoke about?

A. Yes.

Q. After your December trip, when was your next trip up there past Terschelling?

A. When I came out in January.

Q. When was your next trip going into Hamburg past Terschelling?

A. The latter part of April I went into Bremerhaven.

Q. You took about the same route on that trip, this April trip, that you took in December?

A. The mine fields had been cleaned up more, and it was wider, but I ran the same way.

Q. Did you see any mines on that trip?

(Deposition of Walter Mervyn Strong.)

A. I saw about four.

Q. Where did you see those mines?

A. Up in the mine fields, floating mines.

Q. Coming out of Hamburg during the month of January was there heavy trade going on that particular route, past Terschelling, up into the Elbe, and out of the Elbe?

A. No, there was no German shipping business, the Germans didn't have any ocean-going ships at that time, they were operated by American shippers, and there were a few British ships.

Q. Did you ever hear of any ships being sunk from running into floating mines during the months of January and February in that area?

A. We lost one of our own ships, the "Kerwood."

Q. When was the "Kerwood" lost?

A. I have got it on the chart, here.

Q. Do you know of your own knowledge?

A. Of my own knowledge, [123] off Terschelling, to the north of Terschelling.

Q. When was she lost?

A. It was in—I would not say if it was January or February, 1920.

Q. You don't know?

A. One of those trips; she followed me; she was the next trip following me.

Q. You don't know how she was lost?

A. She hit a mine.

Q. What kind of a mine?

A. A floating mine.

Q. Do you know?

(Deposition of Walter Mervyn Strong.)

A. Well, it was in the night-time.

Q. As a matter of fact, you don't know whether she hit a stationary or a floating mine?

A. I saw the crew when she came in.

Q. Did the crew see the mine?

A. No, but they felt it.

Q. Could they tell whether it was a floating or stationary mine?

A. I don't know, I was not there.

Q. In regard to the trade you were in when you were operating for the Kerr Line, you were in the regular freight service, weren't you?

A. New York-Hamburg Line.

Q. What other ports did you call at on the continent?

A. In 1920 we only went into Hamburg.

Q. Just Hamburg?

A. Coming out on the January trip homeward bound, I stopped at Dartmouth and Bristol Channel for Bunkers.

Q. What did you do going in in 1919?

A. In 1919 I had bunkers enough to come home.

Q. Going into Hamburg, what ports of call did you make in 1919? A. Only Hamburg.

Q. You were only going to Hamburg all of this time? A. Yes.

Q. The "Kerwood" is the only ship that you know of that was lost?

A. No, the "West Arrada."

Q. You don't know anything about the wreck, other than what is shown on the chart, do you?

(Deposition of Walter Mervyn Strong.)

A. No.

Q. So that if I took the chart and read the names off I would [124] get just as much information as you are giving me as to the wrecks?

A. Yes, but I know where they are, I have been running by the buoys.

Q. You have not any positive knowledge of your own how any of these wrecks were caused? You don't know how they happened?

A. Yes; this "West Arrada," or whatever they call her, by the notice to Mariners, she hit a mine.

Q. You don't know that?

A. Yes, I read it.

Q. You don't know any more than you read there, do you? You don't know whether it was a floating mine or a stationary mine?

A. It says "floating mine."

Q. You don't know whether it is true, or not?

A. You can go in the Hydrographic Office and look it up.

Q. Going into Hamburg, did you always take a pilot in these 1919–1920 trips?

A. The first voyage for the Kerr Line in 1919, I took the free pilot.

Q. That is, free German pilot? A. Yes.

Q. What about the British pilot?

A. I only took a British pilot the first trip when I came up from Dover, up through the Sands.

Q. In the December, 1919, trip, you did not take a German free pilot then?

(Deposition of Walter Mervyn Strong.)

A. No, I went through without one; they discontinued that.

Q. You did not take a hired pilot?

A. I took a hired German North Sea pilot out.

Q. That is, coming back from Hamburg to the United States? A. And left him at Dover.

Q. But going in, you did not take a pilot?

A. No, I did not take any in.

Q. Why didn't you take a pilot in there? Did you consider it safe to go in without a pilot?

A. I had not made an arrangement for one there. [125]

Q. Where would you normally have picked up a pilot?

A. I could probably have picked up a British pilot, but the first trip I took a British pilot, I took him up through the Sands, I thought I would get a little sleep going across, but we had an argument there, over the price, and I finished him right there.

Q. So that, as a matter of fact, whether you ran with or without a pilot did not make much difference to you, if the price was high you would not take one?

A. No, but we had a dispute, there was a regular, fixed rate.

Q. But I say, if it is above that price you would not take one? A. No.

Q. You considered it was safe enough to run through there without a pilot?

(Deposition of Walter Mervyn Strong.)

A. No, I did not say that. First off, I was mighty glad to get one.

Q. That was in April, 1919?

A. In April, 1919, that was new, that was the first time I had been there, and in October I was glad to get him; that was the first time through the new swept channel.

Q. After they had this channel newly swept for some months, that is up to December, when you made this latter trip, it was considered fairly safe?

A. The company discontinued the pilotage.

Q. They continued it to when?

A. To May or June.

Q. 1919? A. 1920.

Q. You just testified you didn't take a pilot in December, 1919.

A. One way, but I was allowed to.

Q. I appreciate you were allowed to, but you did not take one; you did not think it was necessary to take one, did you?

A. I took the owner's responsibility.

Q. You thought you could get along safely without one?

A. Sometimes you get sore and you do things—you do it anyhow. [126]

Q. What was the practice of masters of these other ships about December, January and February?

A. They would take the British pilot over and pay all their transportation and board until they landed back.

(Deposition of Walter Mervyn Strong.)

Q. That is, take them from England up to Hamburg, or wherever they were going to go?

A. Yes.

Q. That was the universal custom?

A. That was the universal custom.

Q. What were the rates, do you know?

A. They did not all have the same rates, the German rate was 60 pounds, he to furnish his own transportation back.

Q. You testified a little while ago as to floating mines, whether they were in one given area or another area depended largely on the wind, did you not? A. On the wind, yes.

Q. The wind did not generally blow northeast or northwest, did it? A. No.

Q. It would blow northeast one day and maybe northwest the next day, and so on? A. Yes.

Q. You would find the floating mines first in one location and then maybe in another location?

A. Yes, occasionally you might find one, but the bulk of them would be up around this Terschelling mine field; it would depend on where the shore was, and whichever way the wind had been blowing the last day or so.

Q. Who was sweeping around Terschelling?

A. The Germans.

Q. Did you run into any Dutch crews sweeping that field? A. Not up there, no.

Q. You never saw any?

A. The trouble is, you could not tell whether they were Dutch or German.

(Deposition of Walter Mervyn Strong.)

Q. You knew they were sweeping?

A. I knew they were sweeping. [127]

Q. And that it was apparently safe?

A. Safe from moored mines, but not from floating mines.

Q. What were they sweeping, moored or floating mines?

A. They were all sweeping for moored lines.

Q. What did they do with the floating mines?

A. When they saw them they would shoot them up.

Q. So they were actually out for floating and moored mines, weren't they?

A. Yes, to destroy anything they could see.

Q. Did you keep any written data on these mines that you saw? A. No.

Q. You never did?

A. In the log-book, we used to put them in.

Q. You have not got any of those logs accessible? A. Yes, the Kerr Line has got them.

Q. They have got them?

A. They have got them.

Q .You don't remember what date you saw any of these mines? A. No.

Q. You just recollect that you did see mines?

A. I remember I did see mines.

Q. You are not positive?

A. In the Navy logs, they were more apt to be put in there.

Q. This December trip, you just remember that you did see some mines? A. Yes.

(Deposition of Walter Mervyn Strong.)

Q. You don't remember definitely where they were, or how many there were? A. No.

Mr. GRAHAM.—That is all.

Redirect Examination.

Mr. MANNON.—Q. You seem to have had a little difficulty in distinguishing these various trips that you made. As I understand you, you made the first trip through the North Sea and into the Kiel Canal, and then around to Danzig about April of 1919? [128]

A. April, that is when I went up and came back in May.

Q. And you came back the same way?

A. Yes, I was in a Naval ship.

Q. Then you made another trip out of New York in the "Kerowlee," leaving New York about September, 1919? A. About September.

Q. That put you into the North Sea about October, around there? A. Yes.

Q. At that time you went into Hamburg?

A. Yes.

Q. And then there was a third trip that you made that you have been testifying about when you were in the North Sea and went into Hamburg some time in December: That is correct?

A. In December, the 22d or 23d, I don't remember which.

Q. And then you came out of Hamburg on that trip and back through the North Sea, leaving Hamburg about January 15?

(Deposition of Walter Mervyn Strong.)

A. The middle of January, I could not say just exactly.

Q. That is January 15, 1920, or the middle of January, 1920? A. Yes.

Q. State, if you know, whether the trip that you made to Hamburg out of New York that you have been describing here is the same or a different trip to one that would ordinarily be made by a vessel going through the Panama Canal to Hamburg?

Mr. GRAHAM.—I object on the ground that the captain has not testified he ever went through the Panama Canal. Has he testified he made a trip from here to Hamburg, or any other continental port?

The WITNESS.—I stated I have been running there ever since; we are running practically the same route. We shape our course closer to Terschilling, we run from Haaks Lightship to Terschelling and Borkum Reef and Norderney right to the Elbe.

Mr. MANNON.—Q. What I want to find out from you, Captain, is, if a vessel like your vessel, which was running in 1919 [129] through the North Sea out of New York would take the same or a different course, so far as the North Sea is concerned, that a vessel would take through the Panama Canal up to Hamburg through the North Sea? A. It makes no difference.

Mr. GRAHAM.—Objected to on the ground it

(Deposition of Walter Mervyn Strong.)

is hearsay; he did not testify in 1919 that he ever made the trip through the Panama Canal.

A. That is the same thing, the Straits of Dover are practically a starting place up in the North Sea.

Mr. MANNON.—Q. Then the course of a vessel from the Panama Canal into Hamburg, either in 1919 or at the present time, would require you to go through the Straits of Dover, would it?

A. Yes.

Q. So that the course a vessel from the Panama Canal would take into Hamburg either in 1919 or now would be the same as a vessel would take out of New York? A. Practically the same. [130]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of the stipulation of counsel, on Monday, December 15, 1924, before me, Frank L. Owen, a notary public in and for the city and county of San Francisco, State of California, at the offices of Messrs. McCutchen, Olney, Mannon & Greene, in the Balfour Building, in the city and county of San Francisco, State of California, personally appeared Walter Mervin Strong, a witness called on behalf of the libelant in the cause entitled in the caption hereof; and J. M. Mannon, Jr., Esq., and Edwin S. Pillsbury, Esq., appeared as proctors for the libelant, and Ira S. Lillick, Esq., and C. G. Graham, Esq., appeared as proctor for the respondent, and the said

witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

Accompanying said deposition and annexed thereto and forming a part thereof are Libelant's Exhibits Strong 1, 2 and 3, introduced in evidence on the taking of the deposition, and referred to and specified therein.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the Clerk of the United States District [131] Court for the Northern District of California, the Court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 24th day of December, 1924.

[Seal] FRANK L. OWENS,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed December 29, 1924. [132]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

Before Hon. FRANK H. KERRIGAN, Judge.

TESTIMONY.

Monday, December 29, 1924.

Counsel Appearing:

For Libelant: Messrs. McCUTCHEN, OLNEY, MANNON & GREENE; J. M. MANNON, Jr., Esq., and FARNHAM P. GRIFFITHS, Esq.

For Respondent: IRA S. LILLICK, Esq., CHALMERS GRAHAM, Esq., J. A. OLSEN, Esq., J. J. GEARY, Esq.

Mr. MANNON.—Your Honor, there are three actions involved here; I suppose they could be consolidated.

Mr. LILLICK.—I see no reason why these cases should not be consolidated.

Mr. MANNON.—There will be some evidence,

I presume, that will apply to each of these cases individually. There are separate libels and there are separate answers. I presume there will be separate judgments eventually. I presume the three may be tried together, and the evidence applicable to a particular case can be applied to that particular case. [133]

Mr. LILLICK.—Instead of having an order of consolidation we can try the cases together, and then, by stipulation, that portion of the testimony that may be applicable to all of the cases will apply to them, and then, as there will need to be separate judgments, any special testimony applying to a special case can be put in in the order in which the cases appear on the calendar. Perhaps that would be a simpler way of treating them. We will not then have to duplicate the testimony.

Mr. MANNON.—Yes, I think that will be the best way.

The COURT.—That will be satisfactory to the Court.

Mr. MANNON.—I want to make a short statement in regard to these cases. All three of the cases are brought by cargo owners of the ship "West Aleta." The California Wine Association is bringing a proceeding here to recover some $642,000, the value of certain wine that it shipped to Cardiff, and also some that it shipped to Rotterdam.

Rosenberg Bros. & Co. bring a proceeding for

the value of certain rice which had been shipped by that concern to Rotterdam.

S. L. Jones & Co. have brought suit here to recover the value of 82 cases of nutmegs that had been shipped to Rotterdam, the value stipulated to being some $4,841.

The subject we will talk about in the case is deviation. It is stipulated here that that is the only ground of recovery. By deviation is meant that the ship started from San Francisco on bill of lading voyages, in the one instance to Cardiff, and in the other two instances to Rotterdam, whereas she had passed Cardiff and had passed Rotterdam and was on the way to Hamburg at the time she was wrecked; the ship broke in two and became a total loss.

The principle of deviation is, of course, thoroughly established. [134] Exceptions were filed to the various libels in these cases. Those exceptions were heard by Judge Partridge. They were based on the ground that the Shipping Board Emergency Fleet Corporation was not suable as such under the Act of June, 1920. Judge Partridge held that the Emergency Fleet Corporation was liable. In that holding he is supported by the Sloane Shipyards Case, decided by Judge Taft in the Supreme Court of the United States. It is now thoroughly established, both in this case and as a matter of general law, that the United States Shipping Board Emergency Fleet Corporation is in the position of any other ship owner or common carrier.

It is proper for me to say to the Court that a cargo case or cases—rather, two cases—of the same character as this one, have been tried before Judge Augustus Hand, in New York City, and recovery has been made by the cargo owner.

The "West Aleta" was one of the boats originally constructed for the Government, and was being operated, it appears, by Williams, Dimond & Co., as we claim, for the Emergency Fleet Corporation. She took on some cargo at Seattle, none of which, however, is involved in this case, then she came down to San Francisco, in December of 1919, took on some cargo here. The bills of lading involved in this case are dated in the last part of December, and along in the early part of January, 1920. She left here on January 6, 1920, and proceeded via the Panama Canal; then, without stopping, went past the entrance to Cardiff, Cardiff being on Bristol Bay in England, and past the entrance to Rotterdam, in the North Sea, Rotterdam being in Holland, and some 120 miles beyond laid up on the Terschelling Island, in the North Sea. Terschelling Island is one of the Dutch islands immediately off the coast of Holland.

The only basis of liability asserted here is that the ship [135] should have taken her Cardiff cargo, in accordance with her bills of lading, to Cardiff, and then she should have proceeded, in geographical order and in the normal order, to Rotterdam, and there discharged her Rotterdam cargo. Then, so far as these shippers are concerned, they would have had no further concern with the vessel. If she had Hamburg cargo, as

she did, then she should have proceeded to Hamburg. The libelants here say in two of the cases that certain of the goods had been originally destined out of San Francisco on the ship "Cockaponset," another vessel on this same line which had just been established, but there had been some failure or other intervening cause on account of which the goods were taken on board the "West Aleta."

It has been agreed between counsel that there is no difference between the cargo which was originally destined to go on the "Cockaponset" and the cargo which was to go on the "West Aleta," so that what we have to present to your Honor deals entirely with these goods which were shipped on the "West Aleta." The only basis on which we claim liability is that instead of the goods being taken in the straight course to Cardiff in the instance of the California Wine Association, and so far as the other goods are concerned, on a straight course to Rotterdam, stopping only, if at all, at intermediate points, the ship proceeded on a voyage to Hamburg. Without going into the law at this time, it is thoroughly established, we think, that if there were a deviation, then all of the protection of the bill of lading clauses is gone to the ship owner, and the ship owner—the common carrier, becomes an insurer of the goods during the course of the deviation; and if there were a deviation in this case at all, then we think that the Shipping Board Emergency Board Fleet Corporation is necessarily [136] liable.

In order to point out what the issues are in the case, one of the issues here is the same as the issue in the Eastern case, with regard to what the bill of lading provided concerning the so-called "liberty-to-call" clause; that is to say, a bill of lading usually provides, or frequently provides, that a vessel can call at certain ports; sometimes the ports are specified; sometimes a general clause is used. In this case, the "liberty-to-call" clause, which is pleaded as a defense, reads as follows, and with your Honor's permission I will read the first part of the bill of lading. We have agreed that this is the bill of lading.

> "Received in apparent good order and condition from California Wine Association at San Francisco, Cal. Marked and numbered as below (weight, quality, contents and value unknown) to be transported by the ship 'West Aleta,' now at or to arrive at the port of shipment to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, with leave to sail with or without pilots, to transship to any other vessels operated by said corporation, or said board, or for its account, to lighter from vessel to vessel, and from vessel to shore, to transship either by rail, lighter or otherwise, to transfer to and from hulk, and to touch at any port or ports, in any rotation or order in, or out of, the customary route, and to call at any port or ports more than once, unto the port of Cardiff."

So that the defense that is pleaded is this clause, amongst others, and this clause will ultimately require your Honor's interpretation "to touch at any port or ports in, or out, of customary order, and more than once." [137] We shall have occasion to present the authorities eventually on that. Our contention is, and it was sustained in the Eastern case, that that clause is limited by bill of lading voyage. That is, the ports at which they were given permission to touch were only ports which lay between San Francisco or the Panama Canal and Cardiff, geographically. Of course, Hamburg was not one of those ports. That applies to the California Wine Association cargo. So far as the Rosenberg Bros. & Co. cargo is concerned, its destination was Rotterdam.

Amongst other defenses pleaded are the various limitations set out in the bill of lading; that is to say, there are clauses that in case of loss the amount of recovery shall be limited to a certain amount, so much per package or so much per short ton. I think there are three limitations of that character, all of which are set out in the pleadings.

Then there is the so-called "benefit of insurance" clause, by virtue of which, if the goods were insured, the ship owner was to secure the benefit of that insurance if he had to pay for the cargo. As to all of these clauses, our position is, and we think it is thoroughly sustained by the authorities, that the ship owner, if he deviates from his bill of lading course, is not entitled to the protection of any of these clauses, and that during the course of the deviation the ship owner is an insurer of the goods.

So that the issues in this case as we see them are the claim on the part of the cargo owners that this ship deviated and went in a way that she was not entitled, as a matter of right, to go; and that during the course of that deviation, while she was neither on the road to Cardiff nor on the road to Rotterdam, but had gone beyond those places, the vessel was lost; that she was lost during [138] the course of that deviation, and hence is liable for the value of the cargo. We have agreed on that value. The defenses, as we see them, or at least as they are pleaded, are the liberty-to-call clause, which we contend is limited to the voyage, and does not permit the ship to go beyond; and the various clauses in the various bills of lading which have to do with either the benefit of insurance of the values of certain packages or certain tonnage, all of which we think the cargo owner cannot take advantage of, for the reason that it becomes an insurer of the cargo during the course of the deviation.

I think I have told your Honor that this ship left San Francisco on January 6, 1920, and proceeded via the Panama Canal, and passing the entrance to the Bay of Bristol, where Cardiff is situated, passed through the Straits of Dover into the North Sea, passed the hook of Holland, where the entrance to Rotterdam is situate, and then was lost, I think on the 12th of February, early in the morning, 1920, on the sand-bank that puts off from Terschelling Islands, and that as a result of that all the cargo was lost.

Mr. LILLICK.—May I suggest, Mr. Mannon,

that we read to the Court the stipulation into which we have entered covering the facts?

Mr. MANNON.—Yes, I was just going to proceed to do that.

Mr. LILLICK.—I beg your pardon, Mr. Mannon, I though you were going to start in now with your formal proof.

Mr. MANNON.—We think that is our main proof in the case. Counsel have entered into a stipulation of facts in each of the three cases. The stipulation reserves the right to counsel on either side to object to the materiality or relevancy of the evidence, but, of course, not to the method of proof. In accordance with [139] counsel's suggestion, which I think is a very good one, I will read to your Honor the agreed statement of facts in one of these cases. I think perhaps first we had better offer this in evidence formally. I offer in evidence the agreed statement of facts in the case of S. L. Jones & Co., the same being marked as having been filed in this court November 20, 1924, and ask that that be marked Libelant's Exhibit 1.

I next offer in evidence the agreed statement of facts in the California Wine Association case, the same being marked as having been filed in this court November 20, 1924.

It will be agreeable to us, Mr. Lillick, to number these right through, without endeavoring to differentiate between the cases.

Mr. LILLICK.—I think that would be the simplest way.

Mr. MANNON.—Perhaps they had better be marked in each case, though. I think we will fol-

low that course. Likewise, we offer in evidence the agreed statement in the Rosenberg case. With your Honor's permission I will read the agreed statement of facts in the Rosenberg Bros. case. And, of course, by reading it right through I will not have waived any of my objections that I desire to urge. The same reservation, of course, will apply to counsel on the other side. In the Rosenberg Bros. case this statement of facts bears the caption of the court and cause, and then proceeds as follows:

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692. [140]

"AGREED STATEMENT OF FACTS.

"IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that the following facts are true and that said facts shall be deemed proved at any trial or trials of said cause without the necessity of any evidence other than this stipulation, to wit:

"(1) That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent fifteen hundred (1500) sacks of rice for carriage, by the steamer 'West Aleta' as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant. That respondent duly received said

fifteen hundred (1500) sacks of rice on board said steamer as such common carrier of merchandise by sea and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said rice as aforesaid.

"(2) That libelant heretofore and, to wit, on or about the fifteenth day of December, 1919, delivered in good order and condition at San Francisco, California, to respondent four thousand (4,000) sacks of rice, for carriage by the steamer 'Cockaponset,' as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said Libelant; that respondent duly received said four thousand (4,000) sacks of rice and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said rice as aforesaid.

"(3) That respondent failed to carry six hundred eighty (680) of said four thousand (4,000) sacks of rice by said steamer [141] 'Cockaponset' and said vessel sailed from San Francisco without having on board said six hundred eighty (680) sacks of rice. That thereafter respondent placed said six hundred eighty (680) sacks of rice aboard the said steamer 'West Aleta' for shipment to said port of Rotterdam, Holland.

"(4) That at the times herein mentioned the steamer 'West Aleta' was owned by the United States of America and was documented in the name of the 'United States represented by United States Shipping Board.' Prior to the time mentioned in the libel the respondent entered into contracts with

Messrs. Williams Dimond & Company for the management of said steamship, copies of which managing agreement and operating agreement are hereunto annexed and marked, respectively, Exhibit 'A' and Exhibit 'B.' During all the times mentioned in the libel said steamship was operated and managed under said agreements.

"(5) That the bills of lading issued with respect to the carriage of the rice described in paragraph (1) hereof were all in the form of Exhibit 'C' attached hereto, except as to date, quantity, description of goods and freight charges, and this shall be deemed sufficient showing of all of said bills of lading as requested by respondent.

"(6) That the bill of lading issued with respect to the carriage of the rice described in paragraphs (2) and (3) hereof was in the form of Exhibit 'D' hereto attached, and this shall be deemed sufficient showing of said bill of lading as requested by respondent.

"(7) That the steamship 'West Aleta' loaded and carried approximately two thousand six hundred thirty-four (2,634) tons of cargo destined for Cardiff, Wales, one thousand five hundred three (1,503) tons of cargo destined for Rotterdam, Holland, [142] and six hundred sixty-one (661) tons of general merchandise destined for Hamburg, Germany. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower holds and the Hamburg cargo was principally

stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent.

"(8) That at all of the material times herein due diligence was exercised to make the steamship 'West Aleta' in all respects seaworthy and properly manned, equipped and supplied.

"(9) That from December fourth, 1919, to January sixth, 1920, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit 'E,' and hereby made a part hereof, appeared daily in the 'Daily Commercial News of San Francisco,' and on and between the same dates, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit 'F' and hereby made a part hereof, appeared daily in 'The Guide,' a leading commercial paper of San Francisco.

"(10) That no greater value than that mentioned in Clause 2 and/or Clause 3 of the said bill of lading was stated by the shippers, nor was any bill of lading given and agreed therefor stating a greater value.

"(11) That the steamship 'West Aleta' sailed from San Francisco, California, on January sixth, 1920, having on board all the rice described in paragraphs (1) and (3) hereof. That in accordance with orders issued to the master, the vessel proceeded by the direct route from the Pacific Coast to the port of Hamburg via the Panama Canal. The course of the vessel and the circumstances of stranding are shown in a copy of the master's extended protest hereto attached, marked Exhibit 'G' and hereby made a part hereof. That on the

twelfth day of February, 1920, [143] at approximately two-twenty-eight o'clock A. M., the said vessel stranded and was wrecked on Terschelling Island in the North Sea, and, with all her cargo, she became a total loss. All the rice described in paragraphs (1) and (3) hereof was totally destroyed as a result of the stranding and wreck of said steamship as aforesaid.

"(12) That the only ground upon which libelant asserts claim against respondent is upon the ground of improper deviation.

"(13) If instead of proceeding toward Hamburg as her first port of call the steamer 'West Aleta' had put into Rotterdam as her first port of call, she would have arrived at Rotterdam on or about the eleventh day of February, 1920. If instead of proceeding toward Hamburg as her first port of call the steamer 'West Aleta,' had put into Cardiff, Wales, as her first port of call and there discharged cargo and then proceeded to the port of Rotterdam as her second port of call, she would have arrived at Rotterdam on or about the fifteenth day of February, 1920. The market value of the rice described in paragraphs (1) and (3) hereof at Rotterdam, Holland, on or about the eleventh day of February, 1920, and on or about the fifteenth day of February, 1920, was the sum of twenty thousand seven hundred eighty-two and seventy-nine hundredths (20,782.79) dollars.

"(14) That no claims in writing with respect to the matters involved herein were made, nor was this libel filed within nine (9) months after re-

spondent received the goods described in paragraphs (1) and (3) hereof.

"(15) That in stipulating the facts herein the respective parties do not concede the relevancy or materiality of any fact so stipulated. [144]

"(16) That either party may offer evidence upon matters deemed pertinent and not covered by this stipulation.

"Dated: San Francisco, California, November 19th, 1924."

We desire to call your Honor's attention to the stamped clause on the face of the bill of lading, which reads as follows: "The vessel shall have liberty to deviate for the purpose of making trial trips, and shall pay any reasonable increased cost of cargo insurance, if any, incurred in consequence thereof." That is to say, we shall contend that by reason of that clause giving the right to deviate in certain cases there was no right to deviate in other cases.

We shall also call your Honor's attention to paragraph 6 of the bill of lading, the bill of lading being common to all of the cases, which provides as follows:

"Also, that if, on account of weather, surf, earthquake, epidemic, quarantine, riot, war, or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master

is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip."

We shall contend later that by virtue of that clause, providing that the goods could be retained until the return trip in certain cases, we have there the equivalent of a prohibition against the vessel retaining the cargo for the return voyage in any other case than the cases there specified.

Attached to the bill of lading as exhibits are the various things mentioned, the managing agreement, and the operating [145] agreement, which run from the Shipping Board Emergency Fleet Corporation to Williams, Dimond & Co. Those are both dated September, 1919. That date may have bearing in our discussion later.

The bills of lading were issued on the goods in each instance shipped on the "Cockaponset" and later transshipped on the "West Aleta," and were in the identical form as the other bills of lading.

It has some bearing on the case, so I may properly refer to the fact that the "liberty-to-call" clause and the various other clauses set out in the bill of lading are printed clauses, whereas the course of the shipment from San Francisco to Rotterdam is in the written or typewritten portion of the bill of lading. We shall lay some emphasis on that later, because we think that the typewritten portions control the other portions.

The most interesting document, and perhaps one that is not as dry as the others, and which is attached to this stipulation, is the extended protest of

the captain. It is dated the 20th day of February, 1920, and was made within eight days after the loss of the ship. It is set out here for the purpose of showing the course of the voyage, and certain incidents in regard thereto. It may be of interest to your Honor, and I will read it.

Exhibit "G"—Translation of Protest Extended Before the Tribunal of Amsterdam.

"On this day the 20th of February, 1920, has appeared before Us, Dr. S. J. Carsten, Justice of the Tribunal of Amsterdam, in the presence of and assisted by Dr. H. B. Van der Elat, Deputy-Recorder of the said Tribunal, Mr. George Hillier Ewart, master of the American steamer 'West Aleta,' who, while producing the ship's log-book on which We have on this day placed [146] our Exhibition, has made to Us the following deposition, in the presence of the members of his crew named hereinafter, by intermediary of Mr. Jan Adrianus Pister Byl residing at Amsterdam, appointed by Us to act as interpreter and to whom We have administered the following oath or solemn declaration; that he shall faithfully perform his duties as interpreter:

"That the said ship being tight, staunch and strong, masts and pumps fitted with efficient double coats, fully provided with everything that is necessary for proper control of water, engines in good order, and consequently in a thoroughly efficient and responsible state to carry merchandise over sea, was loaded at San Francisco from the 26th December, 1919, until the 6th January of this year, with a com-

plete general cargo, bound for Hamburg, Rotterdam and Cardiff;

"That on the 7th January A. M. he left San Francisco with the said ship, crew consisting of 46 members, himself included, cargo properly loaded, located, stowed, dunnaged and secured as customary hatches closed, covered with good double tarpaulins and battened.

"That *t*he steamed through the Panama Canal and sailed from Cristobol on the 21st January at 12:20 P. M.;

"That the sea voyage was continued without any obstacles except that he encountered bad weather in the Car*aib*ian Sea;

"That on the 10th February at 2 A. M. he passed Bishop Rocks at a distance of 14 miles, passed Lizzard at 6:30 A. M. at 6½ miles' distance and St. Catherine's Lightship at 8:35 P. M. at 9½ miles' distance;

"That on the 11th February at 6:35 A. M. he passed South Foreland at 2 miles' distance and East Goodwin' Lightship at 7:20 A. M. at 1¾ miles' distance, where the deep sea lead was cast [147] and they shaped course 38° true (45° by standard compass) with 7° easterly variation and 14° Westerly deviation; at that moment the log indicated 210;

"At noon the position of the ship on observation appeared to be 51° 52′ 28″ Lat. No. and 2° 25′ Long. E. After the ship had proceeded 30 miles another observation was made at 2:30 P. M. in order to check course and position, when she was

found to be in 52° 12′ 16″ Lat. N. and 2° 49′ 24″ Long. E.;

"That towards 3 P. M. the weather changed and they had to contend with strong windsqualls which grew heavier and heavier until it was blowing a strong N. W. gale and the seas became running high;

"That at 8:40 P. M. on account of the heavy rolling and laboring of the ship, they put the vessel head to sea, 15° true course (24° standard) whilst the log indicated 88;

"That at 10 P. M. they changed course to E. N. E. magnetic, for fear of entering the northern minefield and also in order to be able to control the position of the ship and the current by bearing the lighthouse on the Dutch coast;

"That at 11 P. M. taking cross bearings Kykduin S. E. Magnetic, Eierland E ½ S. magnetic, he had fixed the position of the ship in accordance with the observation of that position at noon at 19 miles' distance, log 107½ Course NE. magnetic had just been shaped, taking drift and tide into account;

"That on the 12th February at 1:30 A. M. he observed on the starboard bow a white flashing light showing sudden flashes of 5 seconds duration, which corresponds with the nature of Norderney lightship and also an illuminated white buoy showing a flare every 7½ seconds which corresponds with the nature of buoy D of the war channel (it is customary to control all lights with a [148] second-watch with stop-spring, which was also done in this instance;

"That the course of the ship was deviated to 109° standard compass, equal to about 100° magnetic, in order to pass quite close alongside the buoy and to keep at a safe distance from the lightship;

"That at 2:15 he decreased the ship's speed, as he wished further to control the position of the ship with respect to the depth of water and to take accurate soundings;

"That at 2:25 when the ship was lying almost still, an accurate sounding was taken which indicated 14 fathoms. The distance performed and various nautical auxiliary means were all checked and by doing so we felt quite sure of being safely in the war channel but nevertheless we proceeded slowly into the direction of Norderney lightship, for the true course was 90° through the middle of the war channel which was deemed to contain the lightship we had in view;

"That at 2:28 the ship struck what afterwards proved to be a sand-ridge which projected several miles to the northward from the western end of the isle of Terschelling;

"That the engines were instantly put full speed astern, but the swell also caused the ships' broad side to be swung round: the engines were then put full speed ahead in order to put the vessel again bow to sea. The ship swang round fully 60°. As we were unable to get the ship any further and as she was falling off again, the engines were reversed once more, the so desired effect of which being that the ship's stern was again turned to the sea,

after which the ship and particularly her stern did not take breakers any more;

"That shortly after being aground a radio message was despatched which was answered by the SS. 'Tillford' and likewise by [149] a station on shore. The 'Tillford' communicated that she was coming to render assistance and the station on shore advised that 2 tugs were under way to render assistance, after which we requested to send out the lifeboat, because the position of the ship was very dangerous and she did already begin to bend badly, both afore and abaft of the midship's house. The sea was too heavy for lowering the ship's lifeboats into the water and we decided to wait for the arrival of the lifeboat, at the same time working the engines thoroughly in order to prevent the broad side of the ship from capsizing.

"We succeeded on attaining this end, it seemed that the ship was only aground amidships. At about 7:50 A. M. the ship gave signs of breaking up and the position became serious. The safety of the crew required all to leave the ship. This was fortunately accomplished by means of the lifeboat which landed the entire crew in Terschelling.

"Shortly after landing the lookout went into the lighthouse from where the ship could be seen and it then appeared that the ship had already broken in two. According to the observation made at noon the distance performed from the position last stated, corresponded with all data stated above concerning lightships mentioned in the war channel, born by taking soundings, and the error in the pre-

vent position of the ship can only be attributed to positive and unknown increase of the force of the drift, which drifted the ship on shore;

"That the damage which has already been or may still be found to ship and cargo, has not been caused by any previously existing defect of ship, rigging, machinery or appurtenances, bad stowage or other insufficient care of the cargo, nor by the action or neglect of him, the appearer, or his crew, but must solely be [150] attributed to the strong winds, high seas, the labouring, pitching and rolling of the ship and the big quantities of seawater that washed on board during this voyage, and to the accident described above, whereas he has used proper seamanship in every respect, lost no time nor wind, attended properly to the pumps, keeping them as dry as far as practicable and taken continuous care of a proper ventilation of the cargo.

"And, moreover, have appeared:

RARISON WILSON, Chief Officer,
JOSEPH HEARY JOHN DELANEY, Second Officer,
WILLIAM HEARY SHARPE, Chief Engineer,
GEORGE STANLEY KRAMER, Second Engineer,

all engaged on board the said ship during the said voyage, who have declared each one separately, but in the same tenor;

"That all statements made by their master as above, are in conformity with the truth;

"That they have been honest and faithful in

handling the cargo, without having committed any fraud or theft and that they do not know of such a thing having been done by anybody else, either directly or indirectly.

"As these depositions may and shall serve to prove any losses, disasters, or damages, and any claims whatever of the charterers of the ship, the appearers have finally requested us to be allowed to affirm their foregoing declaration by oath.

"Prior to affirming the deposition by oath, appeared Delaney testified not having been present at the controlling of the position, although he was on the watch, his work having required him to be engaged on the afterpart of the ship.

"Thereupon all appearers have affirmed their statements taking the prescribed oath in our hands.

"In witness whereof this protest has been drawn up and after being read in the English language by the above-named interpreter [151] and approved by the appearers, signed by the latter, the interpreter, by us, justice of the peace and the above-named recorder.

(w. s.) G. H. SWART.
H. WILSON.
J. J. DELANEY.
W. H. SHARPE.
G. S. KRAMER.
J. A. P. BYL.
A. J. CARSTEN.
H. B. v. d. ELAT.

"A true copy of the original.

"THE RECORDER OF THE TRIBUNAL OF AMSTERDAM."

"Translated by:

_____,

Sworn Translator, Rotterdam."

In each of the cases there is a substantially similar stipulation of facts. The stipulations are all in evidence here now. There is some variation regarding the way the cargo was shipped from San Francisco, but no variation, I think, regarding anything else.

There was attached to the answer, pursuant to our interrogatories, the sailing orders of the vessel. Those sailing orders, I take it, are considered in evidence here. They are identical in the three cases. I want to call your Honor's attention to only a few paragraphs in them. First in regard to the sailing orders, the managers of the vessel, that is, Williams, Dimond & Co., who issued these sailing orders, required that she go to Hamburg first. Paragraph 1 of the sailing orders reads:

> "Immediately upon your command's readiness for sea, and after all customs formalities have been complied with, you will proceed on your voyage via the Panama Canal and the most direct and safest route to Hamburg, Germany, which will be your first port of discharge."

So that this deviation which we charge, if it be a deviation, was at the direct instigation of the

operators of the ship, and [152] was not done by the captain of the ship of his own volition.

We will have occasion to go into the question of mine warnings. We shall contend that the trip from Cardiff and from Rotterdam into Hamburg was a praticularly dangerous trip. It was not only 700 nautical miles from Cardiff into Hamburg, but, correspondingly, 700 miles back, making 1,400 miles that this cargo was to be carried; and that it was 250 nautical miles from Rotterdam into Hamburg. So that that cargo it was proposed to carry 500 miles geographically. We expect to show not only that there was a very long distance greater than in many deviation cases, but that it was a particularly dangerous distance on account of mines; there were very many mines planted in the North Sea during the war period, the English mining the German coast, and, correspondingly, the Germans mining where they could the English coast. We shall show that these were particularly dangerous waters at this time, as this captain appreciated, because he changed his course just before the wreck, in order to avoid what he called the Northern mine field. We shall show your Honor on the charts just where that is.

Paragraph XIV of the shipping instructions refers particularly to mine warnings:

> "Mine Warnings: Necessary instructions for safe passage through the areas which have been mined during the war are being distributed by the hydrographic office of the Navy Department. It is very important that masters

of the United States Shipping Board vessels have the latest possible information. Before sailing from the Panama Canal you should interview the Hydrographic Officer at the Canal and secure the latest information in his possession.

"For your information, the following report was recently [153] received from the Shipping Board at Washington: 'Regret that American masters continue to arrive here without warning of any kind from American authorities regarding mine fields off Gothenberg. Loss of Shipping Board vessel "Lake Placid" on May 19th may be charged to incomplete information furnished to masters in United States, and unless this deplorable condition is not immediately remedied, more ships and lives will be lost in these waters.

"'American SS. "Winding Gulf" arrived here yesterday, June 22, 1919, after miraculous passage through Cattegat mine belt. Respectfully recommend wireless warnings be sent broadcast immediately. British mariners fully informed and alive to dangers. Telegraphed Skaw Lightship and Lighthouse to-day to warn all American ships.'"

That shows that the owners of the vessel, and the operators of it, appreciated the particularly dangerous character of the North Sea waters at this time.

The same matter is again touched on in the same orders issued by Williams, Dimond & Co., in paragraph 32. They say:

"Owing to conditions developing on account of any floating mines in the English Channel, also off the coast of Belgium and Holland, you will, as soon as you are in wireless touch with the United Kingdom, wireless our General European Agent, Mr. W. W. Thurston, London, giving him your position, and ask for further instructions regarding pilots, position, etc., and you will be governed by instructions you will receive in your passage through the channel from Mr. W. W. Thurston, or from Mr. Tobey, of the United States Shipping Board at London."

So the sailing orders, themselves, show the dangerous character of the North Sea on account of the floating mines, and also show that the owners and operators of the ship were thoroughly familiar [154] with those things.

We desire to offer in evidence in the three cases this map entitled "Europe, The North Sea, Compiled from the Latest Information Published Under the Authority of the Secretary of the Navy." This will be marked Libelant's Exhibit 2. Here is shown Cardiff. Here is the Bay of Bristol. The ship came along in this direction, according to the agreed statement of facts, she passed along here, the entrance to Rotterdam; she was wrecked on Terschelling Island. She was headed for Hamburg. Really, the whole basis of the case, from our point of view, is that she ought to have taken the Cardiff cargo here to Cardiff and unloaded it; then she ought to have gone to Rotterdam and unloaded that

cargo. Instead of doing that, she headed straight for Hamburg.

In order to show the conditions in the North Sea, we desire to offer these notices to mariners: "Mine Warnings to Mariners and Supplements to the Charts that are Referred to in the Sailing Directions." Counsel has already seen them. Perhaps I can show them to your Honor and then offer them. At this time we offer in evidence the copies of the "Mine Warnings to Mariners." We offer, first, No. 57, dated December 10, 1919. No. 63, dated January 6, 1920; No. 63a, dated January 6, 1920; No. 65, dated February 17, 1920, and ask that they be marked our exhibits next in order.

Mr. GRAHAM.—We have no objection to the authenticity of any of these mine warnings, nor to the maps that I suppose Mr. Mannon proposes to introduce, but we have a strenuous objection to their being introduced in evidence at all; there is nothing in the pleadings to in any wise indicate that the vessel was lost by striking a mine, floating or stationary; that it is expressly stipulated in the pleadings that the only ground of liability is an [155] alleged wrong deviation. The question of the presence or the absence of mines is not material in this case whatsoever.

Mr. MANNON.—In answer to that, if your Honor please, I would point out that we have to consider whether or not there was a deviation here; one of the things that counsel will argue, we think, is the question of the extent and character of the deviation. As I have already pointed out, from

Cardiff to Hamburg was the distance of 700 nautical miles, 1,400 going and coming back; and from Rotterdam into Hamburg was 250 nautical miles, 500 miles going and coming back. We want to show not only the distance, of which your Honor would take judicial notice, but we want to show the peculiarly difficult character of the navigation. It already appears in the statement of facts that the captain changed his course to avoid the Northern mine fields. We want to show your Honor where the Northern mine fields were.

The COURT.—I will overrule the objection.

Mr. MANNON.—The Mine Warning to Mariners No. 57, dated December 10, 1919, will be Libelant's Exhibit 3. Mine Warning to Mariners, No. 63, dated January 6, 1920, will be Libelant's Exhibit 4; Mine Warning to Mariners, No. 63a, dated January 6, 1920, will be Libelant's Exhibit No. 5. Mine Warning to Mariners, No. 65, dated February 17, 1920, will be Libelant's Exhibit 6. As evidence of the same character, we offer the Supplement to Pilot Chart of the North Atlantic Ocean, which is marked "Washington, D. C., Published December, 1919, at the Hydographic Office, under the authority of the Secretary of the Navy." We ask that that be marked Libelant's Exhibit 7.

Mr. GRAHAM.—We make the same objection, your Honor, to all these charts.

The COURT.—The same ruling. [156]

(The documents were marked, respectively, Libelant's Exhibits 2 to 7, inclusive.)

Mr. MANNON.—We also offer in evidence the

Supplement to Pilot Chart of the North Atlantic Ocean, marked "Washington, D. C., Published February, 1920, at the Hydrographic Office, under the authority of the Secretary of the Navy"; we ask that that be marked Libelant's Exhibit 8.

(The document was marked Libelant's Exhibit 8.)

We have taken the deposition of Captain A. M. Strong, in each case, in fact. Captain Strong is a mariner. He has operated in the North Sea. We went into Hamburg in December, 1919, and came out about January 15th, 1920. We offer the deposition in all the cases.

Mr. GRAHAM.—The same objection.

The COURT.—The same ruling.

Mr. MANNON.—These maps accompany the deposition. I will show them to your Honor.

Mr. GRAHAM.—We make the same objection to these maps.

Mr. MANNON.—I think that concludes our case. It has been suggested that we should introduce some evidence with regard to distances, but I take it that your Honor will take judicial notice of the distances in question.

We rest.

Mr. GRAHAM.—At this time we propose to object to the introduction of this bill of lading to show any liability on the part of the Emergency Fleet Corporation. The bill of lading has already been introduced in evidence. It is alleged that it shows the Emergency Fleet Corporation as the principal party respondent, or, rather, the proper party respondent.

Mr. MANNON.—In regard to that, if your Honor please, the [157] pleadings in this case read as follows, and I am reading now from one of the answers:

> "Answering until Article IV of said first alleged cause of libel, Respondent admits the issuance of its bills of lading on account of said shipments on the dates and for the quantities as aleged in said article, but, in this behalf, respondent refers to the original thereof, which it prays that the Libelant may be required to produce upon the trial."

So that the objection is entirely without the pleading, and is not properly made at this time. But answering further and entirely beyond that, your Honor bears in mind that these United States Shipping Board Emergency Fleet Corporation vessels were being operated by Williams, Dimond & Co. under a managing agreement for the Emergency Fleet Corporation. That agreement is in evidence here. There is the statement on these bills of lading that they are bills of lading of the Emergency Fleet Corporation, under the signature of Williams, Dimond & Co., Williams, Dimond & Co. being agents of the Emergency Fleet Corporation. In the Eastern case, to which reference has been already made, which case involved cargo that was lost at the same time, Judge Hand had occasion to answer the same objection that was made there in his opinion:

> "I think there can be no doubt that the Emergency Fleet Corporation is liable. The bills of lading, while signed by an agent, pur-

ported to be on behalf of the Emergency Fleet Corporation, for at the end of each one are the words, "Shippers are requested to carefully read this bill of lading, which constitutes the contract between the shipper or agent of the owner of the property carried, and the United States Shipping Board Emergency Fleet Corporation."

The COURT.—I will overrule the objection. [158]

Mr. GRAHAM.—If your Honor please: Just by way of a short opening statement on behalf of the respondent in all three of these cases, the Emergency Fleet Corporation, and with the thought that we will put on our witnesses the first think this afternoon, I would like to state to your Honor what we belive the case to be, and what we will attempt to prove. Mr. Mannon has very ably brought to your Honor's attention the main facts, the route the vessel was directed to take, the route she did take, the cargo which was on board, the amount of cargo, and has read what he deemed to be pertinent clauses in the bills of lading, and very aptly phrased the so-called deviation clause as a liberty-to-call clause; I need not read it to you again, as you have heard what it is. It is our contention that under this clause, worded as it is, the ship had the right to make the voyage which she did make; in other words, she had the right to touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports more than once.

With reference to the special clause which is stamped on the bill of lading, regarding trial trips and increased insurance, we will attempt to show the specific purpose for which that was put on.

We will further attempt to show that at this particular time it was the custom, not only of the vessels of this line, but of the vessels of other lines operating out of the Pacific Coast of North America in this European Pacific trade, which included ports in the United Kingdom, ports on the Continent of Europe as far north as Hamburg, and even further north into the Baltic, and probably as far south as Bordeaux, to call at ports for which cargo had been loaded, and was being carried at other than their geographical order; in other words, that it was customary [159] not to go in the geographical order, and that that custom was known to the shipping public in San Francico, and was known by these shippers specifically, or should have been known by them.

We will further attempt to prove by shippers that they did know this custom.

We will further attempt to prove that under the very deviation clause in question, the construction of the shippers was that she had that right to go in other than the geographical order. We take it that in the construction of a commercial document, such as a bill of lading is, that the opinion of users of that commercial document is admissible.

We will further attempt to show that by the advertisement which appeared in "The Guide," and also in the "Daily Commercial News," the sailings of

the ships of Williams, Dimond & Co., and specifically of the "West Aleta," which advertisement appeared from December 4, 1919, to January 6, 1920, the date of the sailing of the vessel, that by so advertising the specific route which the vessel did take, that this advertisement virtually became a part of the contract, and was sufficient notice to shippers of the route taken; and that the indication on the bill of lading that the goods were received in San Francisco for shipment into the port of Cardiff, Rotterdam or Hamburg, whichever the case might have been, did not in itself indicate that the vessel was going to any one of those ports directly; and that in order to clear the question of the route to be taken, the operators of this vessel—Williams, Dimond & Co.—advertised in the usual customary way, in a paper which we will attempt to show was received by the libelants in this case for a long period of years, and is now received by them and is relied upon by them, as well as by the shipping public in San Francisco. [160]

If your Honor please, we will put on our first witness at two o'clock.

The COURT.—You have no witnesses here now, do you mean?

Mr. GRAHAM.—Yes, we have a witness here, if your Honor wishes to go ahead right now.

The COURT.—Yes, I think so, if you have your witness here. How long do you think it will take you to present your case?

(Testimony of Fred A. Hooper.)

Mr. GRAHAM.—I think it will probably take two or three days, your Honor.

The COURT.—Then you had better proceed now.

TESTIMONY OF FRED A. HOOPER, FOR RESPONDENT.

FRED A. HOOPER, called for the respondent, sworn.

Mr. GRAHAM.—Q. Mr. Hooper, by whom are you now employed?

A. The American-Hawaiian Steamship Co.

Q. By whom were you employed in 1919 and 1920, the time the "West Aleta" was loaded out of San Francisco? A. Williams, Dimond & Co.

Q. They were the operators of the "West Aleta," were they? A. Yes, sir.

Q. How long had you been with Williams, Dimond & Co.? A. 16 years.

Q. What was your position, or in what capacity did you serve with Williams, Dimond & Co. in 1919 and 1920?

A. As general freight agent, in charge of traffic.

Q. Did you have charge of the arrangements relative to the booking of cargo, reservation of space, and, in general, the traffic management of the "West Aleta"? A. Yes.

Q. Did you yourself, have charge of the arrangements leading to the shipment by these three libelants, the California Wine Association, Rosenberg Bros., and S. L. Jones? A. Yes. [161]

(Testimony of Fred A. Hooper.)

Q. How long had your firm been engaged in the Shipping Business? A. Since about 1860.

Q. How long have they been engaged in this so-called European-Pacific service?

A. We instituted that service for account of the Shipping Board, I believe it was perhaps late in 1918 or early in 1919.

Q. Approximately how many ships had been sent in that service from the Pacific Coast to the United Kingdom or to continental ports?

A. There had been sent in the service—do you mean what was our entire fleet?

Q. Yes.

A. We operated from 10 to 16 or 18 vessels in that fleet, off and on.

Q. As to the routes which those various vessels took for the period they were operated by you, both before and after the "West Aleta," just state, in general, what the general custom of your firm was?

A. The situation at that time, so far as the United Kingdom and Continental ports were concerned, through the British Channel, was in a very upset condition, owing to the situation that existed after the war; the cargo situation was such, both outward and inward cargo, that it was impossible to establish a definite service with definite or regular ports of call. We were obliged to operate steamers to and from the ports at which cargo offered; in other words, a steamer on the berth for a certain period may have cargo offering for

(Testimony of Fred A. Hooper.)

United Kingdom ports only; hence, that steamer was advertised for United Kingdom ports only. For the following steamer, conditions may have changed, and it was probable, or possible, that parcels of cargo would offer for continental ports. Our fleet, in operating this fleet of vessels, covered United Kingdom and Irish ports, and ports in the Bordeaux-Hamburg range. In other words, we were at liberty to book cargo [162] on any ship for any port within those particular ranges. We had to govern ourselves in handling the cargo according to the quantities offered for the ports, in order to make our discharge at the various ports so as to keep our ships seaworthy and not run the risk of invalidating insurance for account of shippers. Furthermore, owing to the very severe congestion at the United Kingdom ports, we were obliged to handle our ships so that they would make the inbound or the delivery call, and the outbound or their loading call at the same time. The situation was such that it was not unusual for American ships, in making the English ports, to be delayed from 10 days to 3 weeks in one entry. So, therefore, we were obliged, as I say, to make the call at Liverpool or London so that we could discharge or load at the same time. Furthermore, not alone from an economic and efficiency standpoint was that necessary, but it was also necessary, or we deemed it so, in order to facilitate, as far as possible, and expedite the delivery of cargo for account of shippers. In handling our fleet, it was our

(Testimony of Fred A. Hooper.)

policy, and I believe it is the policy of all steamship companies, to very largely, or firstly, bear in mind the efficiency of your service to your customers in order to keep your service popular and make it attractive, so that you can secure business; in other words, in operating a ship at that particular time, we could not throw overboard any regards for the shipper, we must handle the shipper's cargo with as quick dispatch as possible; therefore, the only way to do that was to route our ships via the port in or out of order, or in whichever way we could handle them for the best advantage of all the parties concerned. Therefore, our route being one that was just established, and one that was operating under these abnormal conditions, we had the privilege, we felt, [163] under our bills of lading, so long as we did not exceed our range ports, which, as I have said, were United Kingdom and Irish ports, and Bordeau-Hamburg range—so long as we did not exceed those ports we believed we had the privilege to route our vessels in and around those ports under the clause of the bill of lading, without any risk of invalidating insurance for account of shippers, because we always had that in mind.

Q. In the stipulation of facts there is a copy of an advertisement which appeared in "The Guide"; was your firm in the practice of advertising sailings of its vessels in "The Guide"? A. Always.

Q. How long had you done that, do you know?

A. To my personal knowledge, they did it for

(Testimony of Fred A. Hooper.)

16 years. I had direct contact with it during that period.

Q. Do you know anything about this practice since then? A. It is still the same.

Q. What is your purpose in advertising in "The Guide"?

Mr. MANNON.—That is objected to as immaterial.

The COURT.—Objection overruled.

A. The purpose in advertising in "The Guide" was this, that through "The Guide" the shipping public who considered "The Guide" as authoritative in following vessels' schedules, routes, etc., in advertising in "The Guide," we were obliged to advertise the route a vessel would take, for the purpose of keeping the shipping public, insurance companies, and others interested in shipping advised as to what route the ship took. It was necessary to do that, and it is necessary to do that, because the insurance companies must know the route of a vessel in order to properly place insurance. Without an official advertisement, unless they would make personal inquiry every time a policy was presented to them, they would have no means of knowing how the ship was going to [164] move, especially in the European-Pacific service, where we never sent a ship in the same order of ports twice in succession, that I can remember.

Mr. GRAHAM.—Q. Briefly, what would you have described your service to have been at that time—a direct line of service, or a tramp, or what?

(Testimony of Fred A. Hooper.)

A. No, our service might have been termed more in the nature of a tramp line of service; in other words, we were not a tramp service in one sense of the word, because our service was too frequent for a tramp service, but we were a tramp service so far as our order of ports was concerned, because we did not have a regularly scheduled order of ports, but we had a range of ports, and we were permitted to make any ports within that range, and we tramped that range with an irregular schedule of service as to ports of call.

Q. Your sailings were more or less regular, were they?

A. Our sailings were frequent. They were too frequent to be what is commonly termed a tramp service. A tramp service is one which has a service, say, once every six weeks, or two months, or twice a year, or once a year, or something of that kind—very infrequent service.

Q. A copy of the bill of lading has been introduced in the stipulation of facts. I show you one in the Rosenberg case. They are all similar. I will ask you who makes up these bills of lading, who does the typing in them?

A. A stenographer at that time in my office made them up, under the instructions and directions of Mr. H. C. Brown, who was the bill of lading clerk and had supervision of all that particular department.

Q. At that time, or at any other time in your experience, what has been your experience relative

(Testimony of Fred A. Hooper.)

to putting in in typewriting the ports? That is, do you put in the port of departure and [165] the port of destination, or what do you put in?

Mr. MANNON.—I object to that as immaterial, irrelevant and incompetent, on the ground that the bill of lading necessarily must speak for itself. I desire to argue that question at some length later on.

Mr. GRAHAM.—If your Honor please, we will attempt to show that a bill of lading, which has on it only the port of shipment and the port of destination, does not in any wise indicate the routing. The question of the routing of this vessel is one of the very important questions in this case.

The COURT.—Objection overruled.

Mr. MANNON.—I may be heard on that question later, if your Honor please?

The COURT.—Oh, yes.

A. We put in the port of departure and the port of destination.

Mr. GRAHAM.—Q. You have already testified you did advertise in "The Guide"; was it your practice at that time, and at all times in fact, to advertise the ports in the order in which they were to be made by the vessel?

A. We always advertise the order of ports of call for the distinct purpose of advising shippers, so that they, in turn, could protect themselves with insurance covering the route indicated by the ship.

Q. At that time did you take any other means of

(Testimony of Fred A. Hooper.)

advising the shippers except through this advertisement that you considered was sufficient?

Mr. MANNON.—We object to that on the ground that it is not pleaded.

Mr. GRAHAM.—We will attempt later to prove that the particular advertisement did come to the attention of the libelants. That is one of the reasons why I did not want to put Mr. Hopper [166] on first. I will put on another witness this afternoon to show that the libelants were subscribers to "The Guide."

The COURT.—I will overrule the objection.

A. We did not use any other method as a regular proposition, because we considered "The Guide" the official announcer of vessels in our particular service.

Mr. GRAHAM.—Q. At that time what was the condition of the shipping and the shipper's market; in other words, was there great or little demand for space?

A. The outward demand was very good, shippers being principally concerned in securing a ship that would make the port which they desired. The question of making ports in geographical order, so far as my experience went, was never at any time discussed with me, objected to or talked about by any shipper.

Mr. MANNON.—We move to strike out all of the answer of the witness except the first sentence, on the ground that it is his conclusion as to what the shippers proposed to do, and not shown to have

(Testimony of Fred A. Hooper.)

been brought to their knowledge in any way, and not the result of any conversation with them, or not the result of any touch with them of any character. If there were conversations, then the conversations should be given. If there were writings, then we think the writings should be shown.

The COURT.—Is it your claim that the statement of the witness embraces a statement of the custom?

Mr. GRAHAM.—I desire to ask Mr. Hooper as to the condition in the shipping trade in San Francisco at that time, and from his knowledge as the traffic manager of Williams, Dimond & Co. he would naturally have a knowledge of the custom, of the general condition in San Francisco.

The COURT.—But his answer seems to be his personal view. What [167] you want is the custom. Testimony as to custom might be admissible if it is not governed by a contract or a writing. Is that your view, Mr. Mannon?

Mr. MANNON.—Yes, your Honor. My objection was that the witness was proceeding to testify as to what the shippers proposed to do, or what they wanted to do. We think we are not bound by the witness' conclusion. The witness was not testifying to custom at that time.

The COURT.—A good deal of his answer was not responsive. All of it which is not responsive may go out.

Mr. GRAHAM.—Q. At that particular time did you have any conversations that you can now re-

(Testimony of Fred A. Hooper.)

member with the traffic managers or the persons who handled the booking of this cargo for these three libelants?

A. I had very many extended conversations with the California Wine Association people.

Q. What was the man's name in the California Wine Association with whom you had most of your dealings, and how did you have your dealings, what was the method of dealing?

A. Mr. Jenks. The method was by personal contact and conversation, and also telephone conversation.

Q. What did Mr. Jenks first tell you in relation to the booking of a large quantity of wine on the "West Aleta"?

Mr. MANNON.—If your Honor please, we desire to object to all of this evidence—and I understand there will be quite a lot of it offered—with regard to what was done in the way of preliminary negotiations before the execution of these bills of lading. Your Honor is, of course, thoroughly familiar with the ordinary rule that parole evidence cannot be used for the purpose of altering, varying or contradicting a written contract. That rule is extended to bills of lading. We have the authorities here to substantiate it. Would your Honor desire to hear those [168] at this time, or would you prefer to have that matter come up later?

The COURT.—I will hear you. I have no doubt that is the law.

(Thereupon the objection was argued by respec-

(Testimony of E. C. Gross.)

tive counsel, pending the conclusion of which a recess was taken until two o'clock P. M.)

AFTERNOON SESSION.

Mr. GRAHAM.—With your Honor's consent, I would like to have the privilege at this time of withdrawing Mr. Hooper and putting on the stand, out of order, and it will only occupy a very few moments, a representative from "The Guide" and a representative from the "Daily Commercial News."

The COURT.—I have no objection.

Mr. MANNON.—And it will be understood that all of this evidence is interposed subject to our objection that parole evidence is not admissible to vary the terms of a written contract.

The COURT.—Yes, that will be the understanding.

TESTIMONY OF E. C. GROSS, FOR RESPONDENT.

E. C. GROSS, called for the respondent, sworn.

Mr. MANNON.—Mr. Graham, we might shorten this if you will state to me what you expect to prove by this witness.

Mr. GRAHAM.—I expect to prove by Mr. Gross that this is a photostatic copy of "The Guide," published by them on that date. I also expect to prove by him the manner in which they obtain [169] the information that is printed in

(Testimony of L. K. Grimm.)

"The Guide," and particularly as respects the advestisement of Williams, Dimond & Co.

Mr. MANNON.—We accept counsel's statement that that is a photostatic copy of "The Guide" of date January 5, 1920. If you state to me how he gets his information, perhaps we can admit that, too.

Mr. GRAHAM.—Mr. Gross goes to the various steamship companies on his particular route, as he calls it, he has certain companies designated which he goes to every day, and gets from them the information which is subsequently published in "The Guide."

Mr. MANNON.—We will accept counsel's statement for that, that the witness will so testify.

Mr. GRAHAM.—I prefer to have the witness testify, if there is no objection.

The COURT.—But the admission covers it; that will save time.

Mr. GRAHAM.—Very well. Then we offer this in evidence.

(The document was here marked Respondent's Exhibit "A.")

TESTIMONY OF L. K. GRIMM, FOR RESPONDENT.

L. K. GRIMM, called for the respondent, sworn.

Mr. MANNON.—Do you expect to prove by this witness that "The Guide" was delivered to the three libelants in these three cases?

Mr. GRAHAM.—Yes.

Mr. MANNON.—At their places of business.

Mr. GRAHAM.—Yes, at their places of business.

Mr. MANNON.—We will admit that.

The COURT.—Do you admit that, or do you admit that the witness will so testify?

Mr. MANNON.—We admit that the witness will so testify, and I guess it is the fact, too.

Mr. GRAHAM.—The witness will testify that Rosenberg Bros. & [170] Co. were subscribers, and that he delivered to them a copy of "The Guide" from March 1, 1915, to and including the present time, with no exceptions.

S. L. Jones as of the same dates.

The California Wine Association from 1918 to the present time.

He will further testify that it was delivered to them without any lapse during all of these times, up to and including the present time. He will also testify that had they not received a copy of "The Guide," each and every one of these libelants, they would have complained to him; and, furthermore, that during the times in which these advertisements appeared, the times which are pertinent in this case, he received no complaints from them at all; he knows that he would have received complaints from them, because of failure to deliver "The Guide" to them, because he has, within very recent months, received such complaint.

Mr. MANNON.—We will admit all that, but, of course, if your Honor please, the witness could not testify to what other people would do.

(Testimony of William H. Houston.)

Mr. GRAHAM.—He can only testify to what they have done.

Mr. MANNON.—We will admit that this witness will testify in accordance with Mr. Graham's suggestion; we object, however, to that part of the testimony wherein it is stated what the California Wine Association, for instance, would have done if it had not received its paper.

The COURT.—I will sustain the objection as to that part of the offer.

Mr. GRAHAM.—Does your Honor sustain the objection to the part of the offer that at times since then, when they did not receive their paper, they did make a complaint?

The COURT.—No, I will admit that part of it. [171]

TESTIMONY OF WILLIAM H. HOUSTON, FOR RESPONDENT.

WILLIAM H. HOUSTON, called for the respondent, sworn.

Mr. GRAHAM.—I suppose Mr. Mannon would like me to state what I hope to have this witness testify to.

Mr. MANNON.—Either that, or else let him make the statement.

Mr. GRAHAM.—I introduce this copy of the "Daily Commercial News," of Friday, January 2, 1920, as Respondent's Exhibit "B."

(Testimony of William H. Houston.)

Mr. MANNON.—We will admit that that is such a copy of the paper. Is that ad the same ad that is in the stipulation of facts?

Mr. GRAHAM.—Yes.

Q. Mr. Houston, this is a copy of the "Daily Commercial News" of that date? A. Yes.

Q. What connection have you with this paper?

A. I am vice-president and I am secretary and treasurer of the corporation.

Q. And you know that that ad appeared in that paper on that date? A. Yes.

Mr. GRAHAM.—It is stipulated it appeared on various other dates, also, your Honor.

Q. Do you know whether S. L. Jones and Rosenberg Bros. were subscribers to this paper during the month of January, 1920?

Mr. MANNON.—We admit that they were.

Mr. GRAHAM.—Q. And that a copy was delivered to them during those months?

Mr. MANNON.—He cannot know that. I object to that as immaterial irrelevant and incompetent.

The COURT.—It was the practice of the paper to send it to its subscribers. I guess there is no question about that.

Mr. MANNON.—We will admit that without the necessity of calling anybody else.

Mr. GRAHAM.—Q. Did you receive any complaints during those [172] months from them because of their failure to receive their paper?

A. I cannot answer that, I don't know.

(Testimony of Fred A. Hooper.)

Mr. MANNON.—The California Wine Association did not subscribe for that paper.

Mr. GRAHAM.—No. That is all.

Mr. MANNON.—No questions.

TESTIMONY OF FRED A. HOOPER, FOR RESPONDENT (RESUMED).

FRED A. HOOPER, direct examination (resumed).

(Thereupon counsel concluded the argument on the objection.)

The COURT.—The testimony will be taken subject to the objection.

Mr. MANNON.—And, if your Honor please, without repeating the objection in the record, may it be understood that all of the testimony that goes to varying in any way the bill of lading, with regard to knowledge or with regard to custom, or other matters, may be deemed objected to now and a ruling made and an exception taken?

Mr. GRAHAM.—That is satisfactory. It goes to the whole field of what is outside the written contract.

Mr. MANNON.—Yes. Your Honor understands what our contention is, and we don't want to be deemed to have waived it because of our failure to object to each question.

The COURT.—Yes, that will be the understanding.

Mr. GRAHAM.—Now, Mr. Reporter, will you read the pending question?

(Testimony of Fred A. Hooper.)

(Thereupon the reporter read the question, as follows:)

"Q. What did Mr. Jenks first tell you in relation to the booking of a large quantity of wine on the 'West Aleta'?"

Mr. MANNON.—Will you fix the time and place of these conversations, as nearly as you can, Mr. Graham?

Mr. GRAHAM.—Yes. Fix the time in general, as well as you can, [173] the first time, remembering that it is four and more years ago.

A. I would indicate the dates of these conversations as during the month of December, 1918, I guess it was—

Q. 1919?

A. Yes, 1919. On account of long experience with Mr. Jenks in a business way, in shipping matters, I was well aware that he was a man that was very technical and very decided in his ideas as to having full and complete information regarding any transaction which he entered into covering the movement of any of his cargoes—

Mr. MANNON.—I move to strike out that comment on Mr. Jenks as immaterial, irrelevant and incompetent, and not responsive to the question.

The COURT.—Motion granted.

A. (Continuing.) Mr. Jenks called me over and stated that he desired to make arrangements for the movement of large quantities of wine to various European ports, and wanted to know what we could do. In the conversation he stated that amongst the

II The remedy under the admiralty act is not exclusive - The Fleet Corp was liable in personam - There was no lis in the San Francisco District - or elsewhere -

III. The rule that State claims will not be enforced in admiralty does not apply. Laches will bar. But until after the decision of the Sloan case, it was not certain libels in personam could be maintained. The lower courts - as is frequently done - adopted or followed the policy of the State statute of limitations

119. 120. 121.

Both Court below found deviation.

Petitioners argue that the Liberty Clause in the bills of lading authorised the passing of Cardiff & Rotterdam —

"with liberty &c. to touch at any port or ports in any rotation or order and to call at any port or ports more than once"

It says ① Regard must be had to more than a single b/l. ② the draught & bulky cargo was destined (2) and the language of the Liberty Clause.

Note. The principal part — almost all in value — was destined to Cardiff — ② To have gone to Cardiff first on the outbound voyage would have added no distance ~~to the~~ ~~future~~. (3) — It would have avoided the 1600 miles of distance for the Cargo (4) it would have avoided the Mines here. (5) The voyage to Hamburg beyond the Scotch Islands was in no sense along or near the route to Cardiff & Hamburg was not a port to be passed on the voyage to Cardiff.

(Testimony of Fred A. Hooper.)

various ports in which he was interested was Cardiff. I told him that we had never sent a ship in to Cardiff, owing to the fact that there was never sufficient cargo offered, but if he had offerings in sufficient quantity we would be interested. The result was his indication of a great many thousand barrels of wine to move to Cardiff. I distinctly remember of advising him that we would be glad to handle his consignment, but that it would have to be handled on a steamer that made the continental ports, or English ports first, owing to the fact that it was necessary to stow wine cargo in the lower holds for stiffening, and we could not make satisfactory and safe stowage and keep the ship seaworthy if we loaded that amount of wine for first discharge at Cardiff. Mr. Jenks said that he was not at all interested in what order the ports [174] were made, so long as we could deliver the wine at Cardiff, that it was necessary that the wine be moved from the United States territory within a certain period, and they were anxious to see that the wine was on its way. The shipments of wine accepted for other ports were accepted under the same understanding, and during the same time of these various conversations, in or about the month of December, as stated.

Mr. GRAHAM.—Q. Did you have any written correspondence with Mr. Jenks or with any of the rest of these libelants, relative to the route which this vessel would take, other than what you have just testified to?

A. Nothing in writing whatever. The conversa-

(Testimony of Fred A. Hooper.)

tion with Mr. Jenks in such detail was owing to the fact that they had never shipped wine in such quantities to Europe before, and hence Mr. Jenks was most determined to have full and complete information before him as to how we operated, and how the wine would be handled, and all information in detail. So far as S. L. Jones and Rosenberg were concerned, they were regular and constant shippers to various European ports in connection with our line, and were well aware with the general practices and methods and regulations under which we operated the fleet at that time.

Mr. MANNON.—If your Honor please, we move to strike out the statement of the witness with regard to what Rosenberg knew and with regard to what Jones knew, upon the ground that it is immaterial, irrelevant and incompetent, and not a proper method of proof, and which, in the nature of things, the witness could not know.

The COURT.—Are you willing that that should go out, Mr. Graham?

Mr. GRAHAM.—Yes, your Honor.

The COURT.—Motion granted.

Mr. GRAHAM.—Q. Had you any other shipments made by S. L. [175] Jones and Rosenberg Bros. on your vessel, the "West Aleta"? A. Yes.

Q. With whom did you deal in these companies?

A. For Rosenberg Bros. we dealt almost exclusively with Mr. H. R. Higgins, the general traffic man. With S. L. Jones we dealt with—

Mr. MANNON.—Mr. Bozeman?

(Testimony of Fred A. Hooper.)

Mr. GRAHAM.—Mr. Mannon suggests that it might have been with Mr. Bozeman.

A. Yes, Mr. Bozeman.

Q. And they both had shipments on your vessels before? A. Yes.

Q. How had Mr. Jenks impressed you in regard to his desire for minute details, as to the voyage?

Mr. MANNON.—I object to the question on the ground that it is incompetent. The witness might testify to what Mr. Jenks told him.

The COURT.—Objection sustained.

Mr. MANNON.—If your Honor please, counsel produces what he states is the manifest of the "West Aleta" on the voyage in question. It may go in evidence without further identification.

Mr. GRAHAM.—I offer this in evidence and ask that it be marked Respondent's Exhibit "C." This is the manifest covering all of the cargo shipped on the "West Aleta," Voyage 51, which sailed from San Francisco on January 6, 1920, and with which we are concerned. It shows the various weights, and so on. In the stipulation of facts which we have entered into previously, we have stipulated as to the tonnage on this vessel.

Q. You are familiar with the manifest, are you, Mr. Hooper? A. Yes.

Q. Will you just tell the Court who some of the biggest shippers were on that voyage?

A. To any particular port?

Q. Just pick out indiscriminately the three ports.

(Testimony of Fred A. Hooper.)

Of course, there are the three libelants; now, just pick out half a dozen others.

A. Beck-Vansiclen & Co.

Q. Did Beck-Vansiclen & Co. do quite a business with you people [176] at that time, or did they do a business with you people at that time?

A. Yes, they did.

Q. What was the extent of their business?

A. It was very extensive, and frequent, and in large parcels.

Q. What port did they ship to principally?

A. Hamburg. The California Canneries Co. also were large shippers, and were frequent shippers.

Q. Was their situation about the same as Beck-Vansiclen & Co.?

A. Yes. The California Canneries shipped to all ports, whereas Beck-Vansiclen & Co. confined their business principally to Hamburg; they had very little outside of Hamburg.

Mr. MANNON.—I will state, if your Honor please, that this is the manifest of the "Effingham"; we do not wish it to be put in evidence. It shows that Rosenberg Bros. & Co. shipped 2,000 cases of dried prunes to Liverpool; also 1,000 bags of rice to Liverpool.

The COURT.—This is on another ship?

Mr. MANNON.—This is on an earlier ship.

Mr. GRAHAM.—Q. So that Rosenbergs were shippers on the "Effingham," also? A. Yes.

Q. I show you a copy of the ad of Williams, Dimond & Co., which shows the "Effingham" sailing,

(Testimony of Fred A. Hooper.)

and ask you if that is the order of the ports of call?

A. The ad shows Hamburg, London and Liverpool.

Mr. MANNON.—The witness is looking at Exhibit "F" attached to the stipulation of facts in the California Wine Association case.

A. (Continuing.) The steamer "Effingham" was supposed to sail entirely in accordance with our scheduled order of ports, as advertised. [177]

Mr. GRAHAM.—Q. Did she sail that way, as a matter of fact?

Mr. MANNON.—Just a moment, Mr. Hooper, before you answer that last question. If your Honor please, I move to strike out that statement as being a volunteered statement by the witness, and as immaterial. Well, I will withdraw the motion to strike.

Mr. GRAHAM.—Q. Did the "Effingham" make that voyage as advertised? A. Yes.

Q. Do you remember when the "Effingham" sailed from San Francisco, Mr. Hooper? If you cannot remember the exact date, just state the approximate date.

A. I don't remember the exact date, but she was supposed to sail before the "West Aleta."

Q. Did she, in fact, sail before the "West Aleta"?

A. Yes.

Q. Referring to the vessel "Cockaponset," as set out in Exhibit "E," just tell the Court what happened in the case of the "Cockaponset."

A. The "Cockaponset" was loading cargo at the

(Testimony of Fred A. Hooper.)

pier preparatory to sailing for the ports of Hamburg, Antwerp and Rotterdam, and her cargo caught fire at the dock and considerable of it was burned; in fact, the fire rendered it impossible for her to sail as scheduled, and considerable of her cargo was lifted by the "West Aleta," the following ship.

Mr. GRAHAM.—I think it is in the record, in the stipulation of facts, or, rather, it is in the libels, in fact, that one or more of these libelants had cargo booked on the "Cockaponset," and that it was subsequently transferred to the "West Aleta."

Q. Now, as to the amount of cargo on this vessel, Mr. Hooper, I will just read you briefly the stipulation here:

"No. 6. Steamship 'West Aleta,' loaded and carried approximately 2634 tons of cargo destined for Cardiff. 1503 tons destined for Rotterdam. 661 tons for Hamburg. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and [178] said cargo was in the main stowed in the lower hold, and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent."

Are you familiar with the stowage plan on that ship? A. Yes, sir.

Q. You didn't draw it yourself, did you?

A. I didn't draw it myself, but I had to inspect it.

Q. How much do you know about this stowage plan? Do you know that the cargo was stowed as it is indicated in this plan? You have seen the plan, haven't you?

(Testimony of Fred A. Hooper.)

A. I have seen the plan.

Q. Do you know in fact that the cargo was stowed as is indicated on this plan?

A. I saw part of the cargo stowed on the ship, as I did with every one of our ships moving. I saw more or less of the cargo loaded. I didn't see every package loaded. I did not inspect every hold after she was loaded.

Q. But you do know generally that the locations as indicated on this plan are correct?

A. Yes. I might state that those stowage plans are used by us as official documents, consequently we consider them authentic.

Mr. GRAHAM.—Mr. Mannon has suggested that we ought to prove the stowage plan by a man who knows more about it than Mr. Hooper, although Mr. Hooper can testify that he knows in general that the cargo was loaded as indicated in this plan. I would like a ruling from the Court on that, because I would like to put this in now.

The COURT.—He says it is authentic and is used by his company.

Mr. GRAHAM.—And he will testify that he knows the cargo was loaded in the places in which it is indicated on the plan, although he did not draw the plan, and he did not see all of it go in.

The COURT.—But you have someone else, you say, by whom you— [179]

Mr. GRAHAM.—Yes, I can bring out another party, your Honor.

The COURT.—Very well.

Mr. MANNON.—We have stipulated that the Cardiff and the Rotterdam cargo were stowed principally below, and the Hamburg cargo was stowed principally on top. That is all that this plan shows, as I understand it. Hence it seems to me that this is immaterial.

Mr. GRAHAM.—I don't understand by the stipulation that we are debarred from putting in further proof on the same point.

Mr. MANNON.—Oh, no, I don't want to cut you off at all, Mr. Graham, only that I don't think this is necessary.

The COURT.—If it is covered by the stipulation, I think that is all that is necessary.

Mr. MANNON.—Our stipulation reads: "Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower hold, and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent." What I was getting at in my discussion with counsel was whether he had any other purpose in offering this in evidence, other than as covered in the stipulation. In other words, I think it is all covered.

Mr. GRAHAM.—I simply wanted to make it more graphic. I think this cargo stowage plan is better than the stipulation. I wanted to make it more graphic. I am putting it in for that purpose.

The COURT.—Do you object to it?

Mr. MANNON.—Yes, on the ground that it is immaterial, irrelevant and incompetent, and that

(Testimony of Fred A. Hooper.)

it is already covered in the stipulation of facts; furthermore, the witness does not know that the stowage plan is correct.

The COURT. — Objection sustained on both grounds.

Mr. GRAHAM.—Q. So that according to the stipulation, Mr. [180] Hooper, there were approximately 4,798 tons of cargo on the vessel? Do you remember how many barrels of wine there were from the California Wine Association for Cardiff?

A. In the neighborhood of 12,000 barrels, I believe.

Q. Approximately how much was that in tons?

A. Wine will average 500 pounds to the barrel.

Mr. MANNON.—I think there were 11,000 barrels, according to the pleadings; I think the weight is shown by the bill of lading.

A. It would be about 2,000-odd tons.

Mr. GRAHAM.—Q. So that of the 2,634 tons for Cardiff there were over 2,000 of it from the California Wine Association? A. Yes.

Q. The California Wine Association also had cargo for Hamburg and Rotterdam, did it not?

A. Yes.

Q. So that it knew that the vessel was going to the three ports, did it not? A. Yes.

Q. How about Rosenberg and S. L. Jones?

A. Rosenberg nor S. L. Jones neither had cargo for Cardiff, as far as I can remember. I would

(Testimony of Fred A. Hooper.)

have to definitely look at the manifest to determine that.

Mr. MANNON.—It is agreed between us, isn't it, that the California Wine Association had cargo for Cardiff, but that Rosenberg Bros. had no Cardiff cargo, and that S. L. Jones & Co. had no Cardiff cargo?

Mr. GRAHAM.—That is correct.

Mr. MANNON.—And it is also agreed that the California Wine Association and Jones and Rosenberg had this cargo for Rotterdam.

Mr. GRAHAM.—Yes.

Mr. MANNON.—And that Rosenberg Bros. had some considerable cargo, as shown by this manifest, for Hamburg. The California Wine Association had, I think, 5 barrels of wine, or 5 barrels of liquor of some kind, and Jones & Co. had some small shipment of samples. That is a fair statement, isn't it, Mr. Graham? [181]

Mr. GRAHAM.—Yes, that is a fair statement.

The COURT.—For what place?

Mr. MANNON.—For Hamburg.

Mr. GRAHAM.—Q. So you knew the California Wine Association knew that the vessel was going to the three ports, and Rosenbergs knew it was going to Hamburg and Rotterdam, and that Jones knew it was going to Rotterdam and Hamburg?

A. Yes, sir.

Mr. MANNON.—We object to that because this witness cannot testify to it; nevertheless it is true, it is the fact.

(Testimony of Fred A. Hooper.)

The COURT.—Then the form of the question is objectionable.

Mr. MANNON.—It is the fact, though, your Honor.

The COURT.—Very well.

Mr. GRAHAM.—Q. Having been in the traffic business, as you have testified, are you familiar with what would be the proper stowage for wine, and what would be the proper stowage for general merchandise, with relation to each other?

A. Yes.

The COURT.—It is stipulated here that the manner in which this cargo was stowed was prudent. That matter is covered by stipulation.

Mr. GRAHAM.—Q. Would it have been possible to have stowed this Cardiff wine any other way and to have kept this vessel in seaworthy condition when she sailed from here?

Mr. MANNON.—That is objected to as immaterial, irrelevant and incompetent, and as covered by the stipulation.

A. It would not have been proper to stow that amount of Cardiff wine, nor would it hardly have been possible to stow that amount of wine along with the balance of the cargo on that particular ship, so that the wine could have been discharged at Cardiff and the vessel proceeded safely on her voyage without exceptional hazard nor would it have been safe to have stowed the wine for movement [182] from San Francisco across the Atlantic so that the Cardiff discharge could have been accomplished

(Testimony of Fred A. Hooper.)

safely. It would have been extraordinarily hazardous to try to distribute that much weight with the balance of the cargo the ship had, so as to have made her seaworthy for that voyage.

Q. Do you remember where the Hamburg cargo was stowed, what particular location?

A. The Hamburg cargo was stowed very largely in the shelter-deck, so as to be available for first out.

Q. Could you have, if you had wanted to, with the vessel stowed as it was, gone to the Cardiff first and discharged your Cardiff cargo and then gone on in the regular order with the vessel stowed as she was? A. Not as she was stowed.

Q. Why was that, Mr. Hooper?

A. The vessel would have been unseaworthy had she discharged the wine first as she was loaded.

Q. That is, she would not have had enough cargo, in your estimation, to carry her on?

A. She would have been considerably top-heavy, and it would have been a very hazardous voyage for her to have proceeded on her way had the Cardiff wine been taken out of the ship as she was loaded.

Q. Do you know whether Mr. Jenks, of the California Wine Association, had had experience in shipments by water?

Mr. MANNON.—That is objected to as immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

A. Yes, sir.

Mr. GRAHAM.—Q. On the amount of freight

(Testimony of Fred A. Hooper.)

being offered about the time the "West Aleta" would have arrived in Europe for return to the United States, just tell the Court generally what the freight situation was back to this country, and where most of the cargo was being offered?

A. At that particular period, both for [183] a considerable time before and a considerable time afterwards, the bulk of homeward bound cargo was offered from United Kingdom ports. There was practically nothing offering homeward from Hamburg. The homeward offerings from Rotterdam were very spotty. We might on one ship pick up a reasonable amount of cargo, and the next steamer would pick up nothing. The cargo from Rotterdam, however, was offering considerably more freely—homeward cargo—than it was from Hamburg.

Q. What would have been the effect if you had to put into the United Kingdom ports, and then come back from loading United Kingdom ports, as you testified you would have to do, on the question of rates, in general?

A. The effect would have been undoubtedly the necessity of assessing higher freight rates, by reason of the fact of the additional length of voyage, and the delays incident thereto; the shippers would not have had an opportunity, perhaps, to use the route, because rates would have been very much higher, on account of the added expenses of operation. Therefore, it was quite necessary that we operate the ships in order to keep rates down on the shortest possible turn-around, so as to keep oper-

(Testimony of Fred A. Hooper.)

ating expenses at a minimum. The reason for that, further, I might add, was that the congestion at all United Kingdom ports was such that our steamers were delayed from 10 to 15 or 20 days in getting either in or out of port, so that a second call at the United Kingdom ports would have increased our delay that much more, and without any benefit to the shippers, themselves.

Q. So that in your opinion, unquestionably the rates would have been higher had you had to put into, say, Cardiff, first, and then gone to Hamburg, and then come back to United Kingdom ports to load? A. Yes.

Q. Could you have charged at that time, if you had made the route [184] as I have just indicated, to England and Hamburg and back to England, could you have charged a higher rate than you were getting?

Mr. MANNON.—I object to that as immaterial. I don't see what this rate matter has to do with this case.

The COURT.—I will sustain the objection.

Mr. GRAHAM.—Q. This morning Mr. Mannon spoke about this deviation clause on the bill of lading, with reference to trial trips; I notice that that is stamped on there, and not printed. Can you tell me who stamped that on there?

A. We had that stamp made in our office, on the instruction of the Shipping Board, and we placed that stamp on bills of lading which we issued.

Q. What was the purpose of putting it on there?

(Testimony of Fred A. Hooper.)

Mr. MANNON.—I object to that as immaterial, irrelevant and incompetent, and the writing is the best evidence.

Mr. GRAHAM.—Mr. Mannon has called the Court's attention to this particular deviation clause, in an attempt possibly to show that it has some bearing on this case. I am getting Mr. Hooper to explain that it has no bearing in this case at all.

Mr. MANNON.—I thought you were, and that is why I am objecting. I think the writing speaks for itself.

The COURT.—Objection overruled.

A. The reason for that is this, if you please: These ships that were being turned out for account of the United States Shipping Board Emergency Fleet Corporation had a stipulation in the building contract that before they were accepted by the corporation they must stand a sea trial under load; therefore, the only way they could stand a sea trial under load was after they had been loaded with cargo. The Shipping Board, then, was responsible to the shippers while that ship was under sea trial, in case she [185] met with any accidents while on this particular deviation of her sea trial. Therefore, it was necessary that this stamp be placed on the bill of lading. But after a vessel had had its sea trial under load and had been accepted by the Shipping Board, this stamp, then, was no longer used on any bills of lading covering that particular ship. You will find that stamp on the bills of lading only in the case of new ships,

(Testimony of Fred A. Hooper.)

where the contract stipulates that the vessel must be given a sea trial under load. That is the significance of that particular stamp on that bill of lading.

Q. Now, going back to your conversations with Mr. Jenks, did he ever tell you anything in relation to whether or not this wine which they were shipping had been sold?

Mr. MANNON.—I object to that as immaterial.

The COURT.—I think so.

Mr. GRAHAM.—We want to show, your Honor, by this witness, that this wine was not, in fact, sold, and that the California Wine Association had no worry whatsoever about the date of arrival. Some of the deviation cases go to the point that it is a wrong deviation on account of the fact that goods cannot arrive at the contemplated date of arrival. I want to show by this witness that there was no contemplated date of arrival, so far as the Wine Association was concerned.

The COURT.—He has already testified on that subject, I believe.

Mr. MANNON.—The California Wine Association did retain ownership of this wine. If that is the point that counsel is after, we will concede that.

The COURT.—Is that the point you had in mind?

Mr. GRAHAM.—Yes, that is the point I had in mind. [186]

Q. Do you remember whether you told Mr. Jenks

(Testimony of Fred A. Hooper.)

or Mr. Bozeman, or Mr. Higgins that the ship was going to Rotterdam, Hamburg and Cardiff?

Mr. MANNON.—I object to the question as immaterial, irrelevant and incompetent, and as leading, and it should be differentiated as to each of the three shippers.

The COURT.—Objection overruled.

A. I distinctly remember of discussing the schedule of the ship and her ports of call with Mr. Jenks. I do not recall discussing it with Mr. Higgins, or with Mr. Bozeman. As I before stated, these gentlemen were so familiar with our service that they usually knew as well as we did, ourselves, the route a ship was going to take when they made their reservations.

Mr. MANNON.—We move to strike out that last sentence as the conclusion of the witness.

The COURT.—Motion denied.

Mr. GRAHAM.—Q. You testified about the "Effingham" and the route that she took; do you remember the route of the "Bakersfield"?

A. Yes, she made Antwerp, London and Liverpool.

Q. About when did she leave here?

A. Early in December, 1919, just previous to the "West Aleta's" voyage.

Q. When did vessels start operating from the Pacific Coast to the United Kingdom and the continent after the war, that is, in cargo business?

A. Do you have reference to our line?

Q. Yes, your line, and any other line.

(Testimony of Fred A. Hooper.)

A. Various lines started at various times after the war. The European-Pacific line started either late in 1918 or early in 1919.

Q. What other lines were there about that time?

A. The E. C. Evans Co. were allocated some ships by the Shipping Board to rehabilitate what was called the Maple Leaf Line, which was a [187] line principally to Bristol Channel ports. Then the Harrison Line, an English line, operated by Balfour-Guthrie, started just about the same time, operating to the United Kingdom ports principally, and occasionally to the continent. Then there was the Johnson Line, operating principally to Scandinavian ports, and when cargo offered for either the United Kingdom or continental ports. The Norway Pacific and the East Asiatic practically were the same as the Johnson line. A little later on, the Holland-American Line came into the field, principally to continental ports, but they found they could not fill their ships there, and they also had to take the United Kingdom ports in their schedule to fill their ships.

Q. Do you remember what the practice of these various companies was at that time, taking them in general, as to ports of call?

A. At that time they operated the same as we did; in other words, it was more or less a catch-as-catch-can proposition. It was to accept cargo as it offered, for whatever port it offered, and then advertise your ships and arrange your sched-

(Testimony of Fred A. Hooper.)

ules to suit the cargo offerings, rather than to try to advertise your schedule to make the cargo fit the ships; the ships had to fit the cargoes in those days, rather than the cargo fit the ships.

Q. At the time the "West Aleta" sailed, was there much available space on ships, or was there little?

A. The demand for United Kingdom ports, that is, London and Liverpool, was greater than for the other ports, as a rule, although, as I said before, the market was so decidedly spotty that it was very difficult to tell. You may be very fortunate, say, for a sailing in the last half of December to pick up United Kingdom cargo for your proposed voyage to London and Liverpool, and then in the first half of January, for the ship just following, your offerings for those [188] two particular ports would be decidedly light, and you would be forced, then, to go to the continent as cargo offered. The idea was at all times to keep your ships to as few ports as possible; in other words, the efforts were always made to procure and develop cargo for the minimum number of ports that you could. Your schedule of ports was only lengthened due to the conditions as they prevailed that forced you to take on another port, or three ports, or four ports, or five ports as the case was sometimes in order to fill your ship.

Q. But your ships were going full at that time?

A. The ships were going out practically full.

(Testimony of Fred A. Hooper.)

Mr. GRAHAM.—I think that is all.

Cross-examination.

Mr. MANNON.—Q. On this subject, Mr. Hooper, where the ships were going, I understand your testimony to be that you, yourself, could not tell until the ship was entirely laden where you were going to send her: Is that right?

A. No, sir, that is not right.

Q. Then will you please make your statement again; that was my understanding of your testimony.

A. The market was felt out; in other words, we had our finger on the pulse of the market, and could always determine, a month or so ahead of scheduling a ship, what ports we would want to send her to, and then she was advertised accordingly. That is the reason why you will find the advertisements in "The Guide" not running in anywhere like regular order. One ship would be for certain ports, and the following ship would be for other ports, because we knew the market conditions, and knew well in advance where the demand was going to be; we would take care of London and Liverpool, or Hamburg with this ship, and for the next ship we knew that the demand was such that we would have to send her to other ports, and [189] she was scheduled that way. It was very essential that the ports of destination be definitely determined as far in advance as possible, in order to give shippers opportunity to do business by cable, etc., and to work a cargo for that particular ship.

(Testimony of Fred A. Hooper.)

Q. Is it not a fact, though, that your business was in such a situation that in December of 1919, the situation changed every two or three days, and that you could not tell where your ship was going, and so could not make the advertisement in "The Guide" accordingly?

A. Not after a ship was once advertised and placed on berth; she sat in that position; she was not promiscuously changed around from port to port.

Q. I want to show you this letter to Rosenberg Bros. & Co., dated February 24, 1922, referring to the "West Cayote," and the period of December, 1919, and I call your attention to this particular part of it:

"We might also state that at the time no change was made in our advertisement in 'The Guide,' owing to the fact that the situation was changing every two or three days, and, therefore, the advertisement as originally placed was permitted to stand, and where any specific inquiries were made shippers were verbally advised as to the several changes as they occurred from time to time." I wish you would look that letter over and see whether that is a letter which you wrote over your signature, and sent to Rosenberg Bros.

Mr. GRAHAM.—May I ask you what you are trying to prove by the introduction of that letter, Mr. Mannon?

Mr. MANNON.—I am seeking to meet the situation with regard to the change of these ships. I

(Testimony of Fred A. Hooper.)

understood his testimony originally to be that he sent the ships wherever it was convenient. In response to my question he has testified that he got them on the berth a month ahead of time and the situation did not change. I [190] understand that this letter, written over his own signature, is to the contrary. I think the letter fairly states the situation.

A. Here is a paragraph in this letter which states:

"We also find from copies of telegrams in our files to our coast agents, that definite decision was made about January 8 or 9, to adhere to our schedule as announced in our circular letter of December 16, 1919."

That shows that on January 9th, we did do as we said we would do on December 16th.

Q. You remember writing that letter, do you?

A. I presume I wrote it, my signature is on the bottom of it.

Q. Your signature is attached to it? A. Yes.

Q. That letter that you have just read deals with the sailing of the "West Cayote" in December, 1919, or in January, 1920, does it not? A. Yes.

Q. And that was to sail when, with regard to the "West Aleta"—just before or just after?

A. After the "West Aleta."

Q. Calling your attention to this part of the letter: "We might also state that at the time no change was made in our advertisement in 'The Guide.'" You mean by that, do you not, that the advertisement

(Testimony of Fred A. Hooper.)

in "The Guide" did not correspond with where you intended to send the ship at a given time, don't you?

A. I would not say so unless I could see "The Guide" and get further reference to more of the circumstances which surrounded that particular case. We perhaps might discuss with shippers—for instance, we would advertise a ship, as we did do, I believe, and as we did once for Rosenberg,—in other words, we would announce a ship on schedule to the best of our knowledge and belief, that she would make certain ports, and would carry that advertisement along, and we would find that cargo was not developing for one [191] of the particular ports, but that someone had offered a large block of cargo, or, in other words, asked for an option to deal on a parcel of cargo for, say, another port; in the meantime, as has been said there in that letter, there was more or less conversation with these shippers up to the point of where it either developed definitely or else petered out; while this verbal conversation or dealing might have been going on endeavoring to develop a particular parcel of cargo, our ad in "The Guide" would not be changed until we made a definite decision to change the ship, and then the announcement and advices were sent out accordingly. Wherever a ship's schedule was changed, that is, a port cancelled, it was never done arbitrarily, without communication with the shipper of parcels of freight who had engaged space, it was never done arbitrarily, but was done with the consent of those shippers, they either

(Testimony of Fred A. Hooper.)

consented to transfer to another ship or were entirely agreeable to our making the change. Therefore, there might have been a lot of conversation going on in that period without any definite decision being arrived at, and in the meantime the ad read in "The Guide" as originally accepted.

Q. So you did not know, in reality, where the ship was going that you were advertising in "The Guide"?

A. We always knew that we determined to send that ship to such and such particular ports. There might have been occasions, as I have said before, where a port was added, but always with the consent and with the knowledge of the shippers involved.

Q. What I am getting at is, that there were times when the advertisement in "The Guide" that you supplied representing Williams, Dimond & Co. read to one port, or a list of ports, when you, yourself, as traffic manager, did not know whether the ship was going to that port or those ports, or to other ports? [192]

All the time that that ad was being run showing that she was going to make the particular ports as advertised, cargo was never accepted for ports other than those as shown in the advertisement, although it may have been necessary for us, by reason of the fact of not being able to get cargo for a particular port, as originally advertised, to later on change her around and cancel one port and add another one. For instance if we had a ship advertised for Ham-

(Testimony of Fred A. Hooper.)

burg, London, Liverpool, no cargo was accepted by us on that ship for Antwerp, unless her schedule was changed and the advertisement was changed in accordance with her changed schedule. We may have had that ship definitely scheduled for those three ports and at the same time been dickering for a parcel of cargo for Antwerp, but the Antwerp cargo would not be accepted until the ad was changed accordingly or the port added to the ad the day upon which that cargo may have been accepted.

Q. So that you had that cargo booked and the space reservations made for certain ports without you, yourself, knowing whether the ship was going to other ports, or not: Is that right?

A. We would definitely have cargo engaged for, say, three ports, Hamburg, London and Liverpool; if it were found that cargo was not sufficiently plentiful to fill for those three ports, if we secured sufficient cargo to fill the ship, a fourth port might have been added to the schedule.

Q. And you could not determine that until you had already booked cargo for certain of the ports?

A. We could pretty well tell where we were—not too far in advance, but we could reasonably tell far enough in advance to be safe for all purposes.

Q. This letter referring to December, 1919, says: "Owing to the fact that the situation was changing every two or three days." [193] That is to say, as your cargo possibilities became more and more apparent to you, certain offerings were given you and certain offerings were declined by you,

(Testimony of Fred A. Hooper.)

you determined where your ship was going, didn't you?

A. I believe in that case Rosenberg Bros. were anxious to accommodate them with a special parcel of rice for a port for which the ship was not scheduled. Rosenberg Bros., being very large, consistent shippers with us for the past 20 years, and being one of the heaviest patrons of our European-Pacific Line, they were entitled to every consideration and every co-operation possible; the probabilities are that Higgins was very insistent to get this parcel off, and have us add another port for the ship, but did not have sufficient to warrant us scheduling the ship for his particular parcel; it was perhaps more or less diplomatic language, that he was being nursed along there while we were trying to find cargo sufficiently in addition to make it worth while to add Rotterdam to that schedule for that ship.

Q. I wonder, Mr. Hopper, if I can get a direct answer to my question. I would like to know whether this statement in this letter is not to the effect that the ship was advertising to go to certain ports when, as a matter of fact, you, yourself, did not know what ports she was going to?

A. I will say no, sir. I will answer your question this way: As near as I can recall that letter, that ship was definitely scheduled for certain ports, and Higgins is making appeal there for the addition of another port, and the indecision was there was

(Testimony of Fred A. Hooper.)

whether or not we would add another port to the already original schedule as previously advertised.

Q. I call your attention to this statement: "We might also state that at the time no change was made in our advertisement in "The Guide," owing to the fact that the situation was changing every two or three days, and, therefore, the advertisement as originally [194] placed was permitted to stand, and where any specific inquiries were made, shippers were verbally advised as to the several changes as they occurred from time to time." Is not that a statement that you had one advertisement in "The Guide," but that you had made changes in the routing of the ship, and had not made the changes in "The Guide"? We had made prospective changes verbally, but officially we had not changed the routing of the steamer.

Q. What do you mean by "prospective changes verbally"?

A. We had a prospective offering for this port, and we might add Rotterdam to the schedule, although at the present time she was scheduled for Hamburg, London and Antwerp. Another man comes along and wants to send something, maybe, to Glasgow; we would say, "Well, we have a verbal offering for Glasgow, but the ship at the present time is scheduled Hamburg, London, Antwerp." Those were the various things that were occurring from time to time. Therefore, we would, to hold prospective business in hand, if possible, by pacifying letters such as that, and without definitely com-

mitting ourselves one way or the other, but making an evasive reply to the letter in order to hold the cargo in hand in case the proper conditions developed whereby we were justified in making the change.

Q. Then, as a matter of fact, this particular ship, as of this date, December, 1919, was routed and advertised for certain ports in "The Guide," when you, yourself, did not know whether she was going there, or not?

A. We knew—well, that is one way to put it.

Q. Is that true, or not?

A. It is true to this extent, that right to-day we have ships advertised for certain ports, and you cannot tell whether they are going to go there, or not. It is not an unusual condition in a tramp service such as we were operating [195] at that time.

Q. And it was true in the service that you were operating at that time that while you advertised your ships for certain ports in "The Guide" and other papers, you, yourself, did not know whether they were going there: Isn't that the fact?

A. No, sir, I will not say that is the fact.

Mr. MANNON.—In connection with the evidence of this witness, I will offer this letter in evidence and ask to have it marked our next exhibit.

(The letter was here marked, Libelant's Exhibit 9.)

Q. Mr. Graham has called your attention to the agreed statement of facts. I am showing you the

(Testimony of Fred A. Hooper.)

agreed statement of facts in the California Wine Association case. It has this advertisement here. This is Exhibit "E." I am showing you this one. Steamship "Effingham" for London, Liverpool and Hamburg, sails December 6th. Is that the way that ship went, do you know? A. Yes, sir.

Q. I call your attention to this statement in Exhibit "E," the advertisement in the "Daily Commercial News": "Steamer 'Cockaponset'" for Antwerp, Hamburg and Rotterdam, sails December 5."

A. That is the ship that they had the fire on, and she was cancelled from her schedule.

Mr. GRAHAM.—Will you tell Mr. Hooper what two papers those advertisements appear in?

Mr. MANNON.—The "Daily Commercial News" and "The Guide." These are advertisements in two papers. The first one, marked Exhibit "E," the European-Pacific Line advertisement from the "Daily Commercial News." The second one, Exhibit "F," is the one from "The Guide." In the questions I have asked, I was pointing to the advertisement in the "Daily Commercial News," Exhibit "E."

A. (Continuing.) I withdraw my answers to any statements in connection with the advertisement in the "Daily Pacific News." I [196] thought that was "The Guide" and that you had reference to.

Q. Then you don't know where these ships went?

A. I know this much, that the schedules, as advertised in the "Daily Commercial News" are not

(Testimony of Fred A. Hooper.)

dependable. I know that from years of experience with them. The schedule of ships as published in "The Guide" is practically infallible. The "Daily Commercial News" does not have paid men going around keeping in touch and getting their schedule of ships daily, as does "The Guide." The "Commercial News" schedule of ships may be anything, they may have them inverted, or advertised in any manner, shape or form possible. That is my experience with them.

Q. Did you have anything to do with the advertising of Williams, Dimond & Co. yourself?

A. I did in this respect, that the advertisement, so far as "The Guide" was concerned, that those advertisements were not changed or passed out unless the information came over my desk.

Q. And what, if anything, did you have to do with the routing of the routing of the vessels?

A. The routing of the vessels, the determining of the ports, and the manner in which they operated, was at my own discretion.

Q. So that you had the information and direction as to where the ships were going? A. Yes.

Q. Did you know that the vessels were advertised in the "Daily Commercial News"?

A. I did not pay very much attention to the "Daily Commercial News," because it was the same as any ordinary newspaper might run, it was not as official as was "The Guide."

Q. Did you know that there was a Williams,

(Testimony of Fred A. Hooper.)

Dimond & Co. advertisement run in the newspaper called the "Daily Commercial News"?

A. I knew there was an ad there for many years, —there was a standing ad.

Q. There had not been a standing ad there of the European-Pacific [197] Line for many years, had there?

A. From the time that line started the "Daily Commercial News" took the ad. As far as Williams, Dimond & Co. were concerned, they carried advertisements in the "Daily Commercial News" for many, many years.

Q. The European-Pacific Line commenced in 1918, after the armistice, didn't it, or 1919?

A. Yes, somewhere along in there, late in 1918, or early in 1919.

Q. So that this advertisement in the "Daily Commercial News" did not run before the line was started, so far as you knew, did it?

A. Certainly not.

Q. But you did know that the advertisement was run in regard to the European-Pacific Line, in the "Daily Commercial News"?

A. I knew there was an advertisement carried in the paper.

Q. What attention did you pay to that advertisement to see whether it was correct, or not?

A. Personally, I did not pay much attention to the "Commercial News," because I did not think it was authentic information. I did not pay much attention to the "Commercial News" advertise-

(Testimony of Fred A. Hooper.)

ment. From my definite knowledge of shippers, of many shippers, I know that they do not depend on the "Daily Commercial News," as their official publication for shipping schedules.

Mr. MANNON.—I move to strike out that part of the answer of the witness as to what other people depended on.

The COURT.—Motion granted.

A. (Continuing.) I will say this, that I did not depend in any manner or form upon the "Commercial News" for information regarding schedules. It was necessary for me, in determining the routes of my own ship, to know what my competitors were doing, and in determining what my competitors were doing and how I should govern myself I governed myself by the information which I secured from "The Guide," and I considered that as authentic and satisfactory [198] enough to determine the routing of my own ships.

Mr. MANNON.—I move to strike out that statement as volunteer, and as not responsive to any question.

The COURT.—Motion granted.

Mr. MANNON.—Apparently, Mr. Hooper, you and I are having difficulty in understanding English the same way. What I want to find out is this, whether or not you knew that an advertisement of the European-Pacific Line, of which this Exhibit "E" attached to the agreed statement of facts in the California Wine Association Case is a

(Testimony of Fred A. Hooper.)

copy, was running in the "Daily Commercial News"?

A. No, I cannot say that I knew that definitely.

Q. So that you were the traffic manager of the line, and did not know that an advertisement of the line was running in the "Daily Commercial News"?

A. I knew perhaps that an advertisement was being run there, but as to its detail I did not have time to check up every advertisement in all the papers and periodicals that we were carrying at that time daily to see that every one of them was perhaps as it should be, knowing that those papers were not, as a rule, used as a basis of authentic information.

Q. Williams, Dimond & Co. advertised in the "Daily Commercial News"; state if you know, what the reason was for the advertisement.

A. Simply for publicity.

Q. Publicity of facts contained in the advertisement, wasn't it?

A. Publicity of the fact that they were operating a steamship line to various European ports.

Q. And the advertisements contained in the "Daily Commercial News," published to the effect that Williams, Dimond & Co. were running the European-Pacific Line boats, were not accurate or authentic, were they?

A. I would say absolutely no, because the "Daily Commercial News" did not keep their advertisements up, and it was [199] an impossibility to

(Testimony of Fred A. Hooper.)

keep them posted and check their own advertisements as to what was going on. They tried to get their information every three or four or five days, or whenever they saw fit to correct their advertisements.

Q. But when they tried to get that information in this instance Williams, Dimond & Co. did not supply them the information?

A. I won't say where they got the information. I don't know. They might have got it on the floor of the Merchants Exchange, where they got lots of information.

Q. But you do know that the advertisement of the "Daily Commercial News," a copy of which is in this stipulation of facts, is not accurate?

A. If it does not compare with "The Guide" I would say it is not accurate.

Q. Did you place either of these advertisements, the one in "The Guide," or the one in the "Daily Commercial News"?

Mr. GRAHAM.—I think he has already testified on this matter, your Honor, in regard to both of these advertisements.

Mr. MANNON.—Well, Mr. Graham, do you understand that he placed these advertisements?

Mr. GRAHAM.—I don't know anything about it, one way or the other.

Mr. MANNON.—Then let me ask the witness.

Q. Did you place these advertisements?

Mr. GRAHAM.—That is objected to as already asked and answered.

(Testimony of Fred A. Hooper.)

The COURT.—Objection overruled.

A. I will say this, that Mr. Gross was in my office daily, about eleven o'clock every morning, to receive information regarding the ad that we carried in his paper, and he got the information sometimes from me personally, and sometimes from my assistant.

Q. What I want to find out is whether you placed the advertisement [200] in either "The Guide" or the "Daily Commercial News," and by "you," I mean did you have anything to do with the buying of the space, or the paying for it, in either of these papers?

A. I was an employee of Williams, Dimond & Co., and therefore had nothing to do with the payment of space there. The firm paid for the space. As an employee I furnished "The Guide" principally with the information appertaining to their advertisement. I recommended to the firm the taking of space in 'The Guide." The firm of Williams, Dimond & Co., paid the money, I didn't pay it.

Q. Did you also recommend the placing of any other advertisements? A. No, sir.

Q. Your ship carried Seattle cargo, didn't she—your line? A. Yes.

Q. And, in fact, the "West Aleta" carried some Seattle cargo, didn't she? A. Yes.

Mr. MANNON.—I want to show the witness some advertisements that appeared in a Seattle paper.

(Testimony of Fred A. Hooper.)

Mr. GRAHAM.—What is this?

Mr. MANNON.—This is the "Daily Index," an official paper of Seattle—a shipping paper. I want to ask the witness about this advertisement.

Mr. GRAHAM.—What do you expect to prove by these?

Mr. MANNON.—I cannot tell until I ask him; he is your witness.

Mr. GRAHAM.—I object to the introduction of these.

Mr. MANNON.—I do not offer them; I just want to ask the witness about them.

Q. As a shipping man, do you know anything about the "Daily Index"?

Mr. GRAHAM.—I object to all of this line of questioning on the ground that it is not proper cross-examination, and that this case has nothing to do with shipments made out of Seattle. Mr. Hooper has testified he was employed in the San Francisco office, and he has not testified that he was ever employed in the Seattle office. [201]

The COURT.—Objection overruled.

Mr. MANNON.—Q. I want to call your attention to this "Daily Index," of Seattle, dated December 3, 1919, and to this advertisement, which reads: "European-Pacific Line, through only United States Shipping Board, steel steamers, from Seattle to Cardiff, Rotterdam; steamship 'West Aleta,' December 15." Did you know that that advertisement was running?

A. No, sir, I didn't know anything about it.

(Testimony of Fred A. Hooper.)

Q. You had nothing at all to do with that, did you? A. Nothing whatever.

Q. Did you supply any information to the "Daily Index" at all? A. No, sir.

Q. Did anyone in Williams, Dimond & Co., to your knowledge? A. No, sir.

Q. Do you know whether or not Williams, Dimond & Co. paid for that advertisement.

A. I don't know. I think the agencies at ports paid their own advertising expenses, although I am not sure about that.

Q. Is it a fact that the agency of Williams, Dimond & Co. at Seattle paid for that ad?

A. I don't know who paid for that ad. It may be that the Shipping Board paid for it, because it was a Shipping Board steamer. There was one particular point of time where the Shipping Board paid for all the advertisements of their own steamers, but whether it was during this period or not, I don't know.

Q. You did not know that that advertisement was running at all?

A. I didn't know anything about that advertisement, I never saw it; this is the first time I have ever seen it.

Q. And you paid no attention at all to any advertisements that were running.

A. Not outside of San Francisco.

Q. You were a witness in the case that was tried in the east, [202] weren't you, Mr. Hooper?

A. Yes.

(Testimony of Fred A. Hooper.)

Q. You saw the agreed statement of facts there, didn't you? A. No, sir.

Q. Never read it? A. No, sir.

Mr. MANNON.—With counsel's permission I would like to have marked for identification these advertisements. These papers are from the official file of the paper, I am told, and I have to send them back. I would like to have these copies marked.

Mr. GRAHAM.—I have no objection to your having them marked, but that, of course, does not admit them in evidence.

Mr. MANNON.—In connection with the testimony of this witness we desire to have marked these advertisements in the "Seattle Daily Index."

Mr. GRAHAM.—This witness has not identified them.

Mr. MANNON.—If it becomes material as to how this ship was advertised, we hope to be able to produce from Williams, Dimond & Co. the people who paid for the advertisement. This witness said he was responsible for one advertisement.

The COURT.—I will overrule the objection.

Mr. GRAHAM.—Are they in evidence?

Mr. MANNON.—Well, I will offer them in evidence, and get someone here later from Williams, Dimond & Co.

Mr. GRAHAM.—I object to them on the ground that they are advertisements which appeared in Seattle. This case only involves shipments from San Francisco. What was advertised in Seattle has nothing to do with what shippers read here

(Testimony of Fred A. Hooper.)

in "The Guide." This certainly could have nothing to do with any shipment made from San Francisco.

Mr. MANNON.—We expect to show the utter unreliability of these advertisements. We have one advertisement in the "Daily Commercial News" and another one in "The Guide," and a third one in the [203] Seattle commercial paper.

The COURT.—The thing that bothers me about it, Mr. Mannon, is as to the authenticity of that paper. Is that admitted?

Mr. GRAHAM.—No, that is not admitted. I never saw the ad before. Mr. Hooper testified he never saw it before.

The COURT.—I am not referring to the ad, I am referring to the paper, itself.

Mr. GRAHAM.—I have no doubt that it is a paper published in Seattle, just as "The Guide" is published in San Francisco. But I still object, your Honor, to any advertisement published in Seattle.

The COURT.—I will overrule the objection.

(The paper was here marked Libelant's Exhibit 10.)

Mr. MANNON.—Q. Now, I want to have it clearly defined what the usage of doing business was of the European-Pacific Line as to what ports the boats stopped at in Europe. I understood your testimony to be that the European-Pacific Line directed those ports to whatever ports would

be most convenient to its purposes, either in discharging or in picking up cargo; was that correct?

A. Not entirely so, no, sir. Bearing in mind at all times that service to shippers must be given just as much consideration as service to the ship, or efficiency to the ship, in other words, efficiency to the ship and efficiency to the shippers had to be considered hand in hand, we could not arbitrarily throw a ship into any ports we desired without considering the effect upon our customers and our clients.

Q. What I was getting at in my question, Mr. Hooper, was this: I was getting at the question of whether the next time you sent out a ship, like the "West Aleta," you sent her to Hamburg, to Rotterdam, and to Cardiff in that order, or whether you would send her in some other order, governed by traffic conditions? [204]

A. We might very readily have sent her in a different order entirely in making the same three ports, depending entirely upon the nature of the cargo.

Q. And it might well have been, had the traffic conditions required it, that you would have sent that ship to Rotterdam first?

A. Had the cargo conditions been such that she would have had to go there in order to protect her stability and seaworthiness in the discharge and loading of cargo.

Q. And it might well have been that you would

(Testimony of Fred A. Hooper.)

have sent her to Cardiff first had traffic conditions so required it: Isn't that true?

A. I don't like the word "traffic" there, I would say cargo conditions.

Q. That is, her cargo conditions?

A. Cargo offerings.

Q. By "cargo offerings," you might have determined whether to send that ship to Cardiff first?

A. Yes.

Q. In this case you sent the ship to Hamburg first? A. Yes.

Q. So that dependent on the cargo offerings, you sent your ships to such of those ports and in such order as seemed proper in accordance with business conditions? A. Yes.

Q. You testified, as I understood you, that this stamp across the face of the bill of lading, which reads, "The vessel shall have liberty to deviate for the purpose of making any trial trips and shall pay any reasonable increased cost of cargo insurance, if any, incurred in consequence thereof," was put on the bill of lading because these were new ships?

A. Yes.

Q. As a matter of fact, this was not the first trip of the "West Aleta," was it?

A. I cannot recall that without referring back to the records. We had 18 new ships there. Just whether that was the first trip, or the second, or the third voyage, I don't know. She may have gone on her first voyage without executing her

(Testimony of Fred A. Hooper.)

[205] trial trip according to the builder's regulations.

Q. So you don't know whether this was the first or the second trip of the "West Aleta," or the third?

A. Not without referring to the records to determine that, no.

Q. So far as you know, the "West Aleta" on her first trip made Hull first, and Hamburg second —and by "Hull," I mean Hull, England; that is correct, isn't it?

A. Without refreshing my recollection as to these individual voyages, I would rather not make a definite answer.

Q. So you are unable to testify with regard to the particular ports made by the "West Aleta" at any particular time?

A. I would say that I would be able to, by checking my official records, I would be able to find out what they are. I cannot go back four or five years and recall every individual voyage of every ship we had.

Q. Where are those records?

A. Those records would be with the United States Shipping Board, or else they are in storage at the present time at one of the docks. I tried to secure those to-day at noontime, in anticipation of this question.

Mr. GRAHAM.—Do you want to know what the facts are in that connection, Mr. Mannon?

Mr. MANNON.—Yes. As I understand it, the

(Testimony of Fred A. Hooper.)

"West Aleta" went on her first voyage to Hull, England, and to Hamburg, Germany, second, and then returned to the United States.

Mr. GRAHAM.—I think that is correct.

Mr. MANNON.—Q. With regard to the "Effingham," I call your attention to these advertisements of the "Effingham" sailing for London, Hamburg and Liverpool; can you tell me where the "Effingham" went on the voyage before, if she made a voyage before?

A. If I could refer to my office records I could recall that to you and give it to you very definitely. [206]

Q. But without that you couldn't tell?

A. No, sir.

Q. And that is the fact also with regard to the "Cockaponset," you couldn't tell what voyage this was of the "Cockaponset," sailing on December 9?

A. That is the vessel that had the fire; I remember that voyage was cancelled.

Q. What voyage was that of the "Cockaponset"?

A. That might have been the first, or the second; I couldn't tell you without looking it up.

Q. You don't know what ports she went to in Europe before, do you?

A. I don't remember the ports.

Q. You could not remember the order of the ports of call now, could you?

A. Not without referring to the data.

Q. And with regard to the other ships that are noted here, the "Eelbeck," noted as homeward

(Testimony of Fred A. Hooper.)

bound, loaded at London, you couldn't tell where she touched on the outward bound trip from San Francisco, could you?

A. By referring to my office records, I could.

Q. But as matter of memory you would not know?

A. I would desire not to try to guess at it.

Q. And the "West Catan," another ship noted here, you don't know from your recollection whether the "West Catan" had gone on any previous voyage, and the order of ports, do you?

A. The "West Catan" made a number of direct voyages, London, Liverpool, and no other ports; she also made continental ports and then U. K. ports on another voyage.

Q. But now, and without referring to your records, you could not tell where she had gone?

A. I would not care to answer it.

Q. And that would be your answer in regard to other boats noted here, the steamship "Dewey," the steamship "Orani," your answer would be the same, wouldn't it?

A. Without referring to my own data I would not care to answer those questions. [207]

Q. And wherever those boats may have gone, however, you are certain that her course was determined by the cargo offerings outbound?

A. It must have been; that was what determined the voyage of the "West Aleta" to Cardiff.

Q. That wine could have been stowed on the

(Testimony of Fred A. Hooper.)

"West Aleta" so as to have permitted her unloading the wine at Cardiff, couldn't it?

A. I would say not with the quantity of wine which she had for discharge at Cardiff, plus the nature of the cargo which she had for discharge at Cardiff, plus the nature of the cargo which she had to discharge at other ports; you would not have been able to safely load that cargo with due regard to the safety of the ship, to the safety and care of the other dry cargo which you had aboard the ship. It would not have been good seamanship, nor would we have been able, perhaps, to have procured a clean [certificate of seaworthiness for voyage] bill of sale from our surveyor had we attempted to fill those holds with both wet goods and dry goods.

Q. So that the reason, or one of the reasons, for not stowing that wine so you could unload it at Cardiff, was that the ship would not sail so well after she left Cardiff had that practice been followed?

A. No, sir; that might have been given consideration, but that was not the only reason which determined the schedule of ports of that ship.

Q. I am asking you this, if that was one of the reasons.

A. That reason was given very careful consideration.

Q. And was it one of the reasons that governed you in making your determination?

(Testimony of Fred A. Hooper.)

A. I would not say it was the governing reason for determining the routing of the ship.

Q. Did it have any effect at all on your mind?

A. It perhaps had some effect on it.

Q. Are you able to make the statement that it did have some effect on your mind?

A. If I can sit down for a few moments [208] and have that stowage plan in my mind more definitely, I will be able to make more definite statements.

Q. But without refreshing your recollection in some other way, or figuring out some other reason, you cannot now tell that one of the reasons for not unloading the boat at Cardiff as she passed there was because it was better to sail the boat after she left Cardiff with that wine on board?

A. You could not determine while the vessel was in transit whether or not she should or could have gone into Cardiff. The vessel sailed from San Francisco with a very definite route in mind. She was loaded for Cardiff discharge last. Whether or not that cargo could have been manipulated around so that she could have made Cardiff, first or not, at this moment it would be necessary for me to review her entire cargo and become more familiar with every detail of it to decide whether or not that Cardiff wine could have been manipulated around the ship and properly stowed so that she could have made Cardiff first. But she left here with a very definite destination, and the cargo was

(Testimony of Fred A. Hooper.)

loaded with that definite destination in mind as she sailed.

Q. And you don't know now that one of the reasons that affected your mind in not unloading the ship at Cardiff first was the fact that you wanted the wine in her until after she left Cardiff, or until she got to Rotterdam anyway?

A. We wanted that wine in her for the purpose of the safety of the ship, the safe navigation, for her stability; secondly, it made no difference to the California Wine Association what direction or in what order of ports the wine moved. Another reason was we did not want to come back, making Cardiff, London and Liverpool, and then having to double back to London and Liverpool again.

Mr. MANNON.—I move to strike out the words in the answer, "It made no difference to the California Wine Association"; it is not responsive to the question, and is not shown to be within the [209] knowledge of the witness.

The COURT.—Motion granted.

Mr. MANNON.—Q. So the stability of the ship on her road to Rotterdam, and on her road to Hamburg, was one of the reasons that affected you in not having the wine unloaded at Cardiff?

A. Do I understand that you want to know why we did not stop this ship at Cardiff on her way over and unload the wine at Cardiff? I am trying to answer you the question as you ask it. If I don't understand you, I wish you would put me right, because I want to understand you in giving you

(Testimony of Fred A. Hooper.)

my answer, and I don't want to understand you in one way when you are asking something else.

Mr. MANNON.—Mr. Reporter, will you please read the last question to the witness?

(Question read by the Reporter.)

A. I will say "No," to that question.

Q. And the stability of the ship, then, into Rotterdam, or into Hamburg, had nothing at all to do with fact that she did not unload the wine at Cardiff?

A. I will answer that both yes and no; that is a question that can be answered both ways, and neither way is proper.

Q. Will you please explain your answer?

A. You asked the question as to whether or not we could have stopped that ship at Cardiff and discharged the wine, to which I replied no. You then asked whether or not the stability of the ship would have been affected if the wine was discharged at Cardiff; that is, it would have been affected had not the cargo that was left in the ship been restowed, and the ship perhaps been put in such shape that she could have taken ballast in order to have made her seaworthy from Cardiff to Rotterdam or Antwerp. On the other hand, if the cargo were taken out at Cardiff as it was stowed, it would [210] have meant the discharge of considerable of the shelter-deck cargo, in which case, unless the lower holds had been rearranged, the ship would have been unseaworthy.

(Testimony of Fred A. Hooper.)

The COURT.—We will adjourn now until to-morrow morning.

(An adjournment was here taken until to-morrow, Tuesday, December 30, 1924, at 10:00 o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [211]

Tuesday, December 30, 1924.

FRED A. HOOPER, cross-examination (resumed).

Mr. MANNON.—Q. Mr. Hooper, we had been discussing, at the time of adjournment yesterday, the question of the stowage of the ship. I take it that the stowage of the ship was under the direction of the ship's officers, was it not?

A. Under the direction of the ship's officers and the surveyor.

Q. Is it possible, with a ship like the "West Aleta," to load her with the quantity of wine she had for Cardiff and to unload that at Cardiff, do you know?

A. In my judgment I would say no. If I were handling that ship officially and was responsible from an insurance standpoint, and had to assume the responsibility from the insurance standpoint, I would say no, that there was too much wine on that ship to have loaded her for first discharge at Cardiff.

Q. Your testimony then, practically, is to the effect that given a ship of the tonnage of the "West Aleta," and given the amount of wine for Cardiff

(Testimony of Fred A. Hooper.)

that there was here, you could not take that wine in San Francisco on that ship in any way and unload it at Cardiff: Is that correct?

A. That is correct, so far as the question you asked me is concerned, but when you take into consideration that that ship had other cargo for other ports, then I would answer no.

Q. Now, let us be perfectly clear about this, Mr. Hooper: You have, say, 11,000 barrels of wine, approximately, to go to Cardiff; you have a ship of the type of the "West Aleta"; you are familiar with what the wine is like to handle as cargo; you are familiar with the "West Aleta"; could you take the "West Aleta" and take that 11,000 barrels of wine and land it out of San Francisco [212] for Cardiff in any way direct?

A. For a direct shipment, with 11,000 barrels of wine, which is in the neighborhood of 2,700 tons, unless the ship was well ballasted with full double bottoms of oil, and all her fresh water tanks full, I would say it would be a very hazardous voyage to send the "West Aleta" to Cardiff with only the 11,000 barrels of wine in her; she would be too light.

Q. As a matter of fact, is it not ordinary practice to sail a ship of the type of the "West Aleta," with that amount of cargo, across the Atlantic Ocean, one way or the other?

A. With the amount of dead weight cargo, 2,500 tons, it perhaps is done and has been done.

Q. And for homeward-bound cargo, did you not

(Testimony of Fred A. Hooper.)

do it with these ships while you were operating them?

A. We were compelled to do it, we were obliged in many instances to stiffen the ship to assist.

Q. And if you could haul cargo of that character from the European side to the American side in that way, then you could haul it back from the American side to the European side, if necessary, could you not?

A. Yes, but, as I have said, it is a hazardous voyage for the ship, because she is so light.

Q. And if you used sufficient ballast, that would not be hazardous, would it?

A. No, that would help.

Q. So to get back to my question, you could take a ship like the "West Aleta" and put 11,000 barrels of wine in her and take it to Cardiff, couldn't you?

A. You could, taking into consideration and doing, as I have said before, by giving her full fuel in her double bottoms, and all her fresh water tanks filled, and perhaps some ballast with it—it may not be necessary to take ballast.

Q. And, likewise, it would have been perfectly practicable, with the "West Aleta" carrying the cargo which she carried, for her to [213] have left San Francisco with that cargo, assuming the proper stowage of the vessel, for that vessel to have gone first to Cardiff and unload her cargo at Cardiff, as much as was destined for that port, and

(Testimony of Fred A. Hooper.)

then to have gone to Rotterdam and unloaded as much as was destined for that port?

A. I would say no. That was just the point I made originally with you; you asked the question first if we could put 11,000 barrels of wine on her, and go to Cardiff and discharge her. Yes. But with the additional cargo for the other ports that was in that ship—well, it might have been done. I answered the question yesterday that I would have to look the stowage plan—the tonnage—over, and determine just how stowage could be made in order to keep the dry goods and the wet goods separate to make your discharge at Cardiff, and still have your ship in such shape that you could have put ballast into her without running the danger of damaging the cargo beyond, or whether or not it would have been possible to have so loaded the ship, the trunkways and one thing and another, so as to separate your cargo and make it possible to discharge that particular cargo at Cardiff and have been safe to have gone on to Rotterdam and to Hamburg.

Q. This vessel had approximately 1,600 tons of cargo for Rotterdam and approximately 660 tons of cargo for Hamburg; as a shipping man, would it be possible to take that ship at Cardiff, with the 1,600 tons for Rotterdam, and the 660 tons for Hamburg, and take your cargo from Cardiff to Rotterdam and there unload, and then go from Rotterdam to Hamburg and unload the Hamburg cargo?

(Testimony of Fred A. Hooper.)

A. Provided your cargo was of a nature that you could assimilate it and load it in such a way that you would avoid possibility of damage to the cargo that was left in the ship. There is a difference between 2,500 tons of cargo and 2,500 tons of wine in barrels when you are considering the stowage of the ship. 2,500 tons of [214] cargo is one thing, and 2,500 tons of wine is an entirely different parcel to be dealt with, and must be dealt with as wine and not simply considering it as 2,500 tons of cargo.

Q. I asked you this morning about 11,000 barrels of wine. You have testified that you were competent to take that ship, stow the 11,000 barrels of wine on her, and take her into Cardiff.

A. With that alone, but not mixing it with other dry cargo that was on the ship for points beyond. I think I made myself in my answer very definite on that point, also.

Q. So you are perfectly clear you could take the wine to Cardiff?

A. Take the wine to Cardiff, provided it had no other cargo aboard the ship. I answered that question very clearly and definitely, yes, the wine could have gone to Cardiff, but the "West Aleta," with the cargo which she had, including the 11,000 barrels of wine, could not, in my opinion, have been loaded satisfactorily and safely for Cardiff discharge first and then proceeded on to Rotterdam and to Hamburg with the balance of the cargo aboard. If she had the 11,000 barrels of wine only,

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(Testimony of Fred A. Hooper.)

that question can be answered from a different standpoint entirely.

Q. What is the reason that could not be done with the cargo?

A. Because the capacity of the ship was such and her construction was such that in my opinion you could not have satisfactorily distributed the Cardiff wine throughout the ship with—and I want you to get this—with the class of cargo we had for Rotterdam and for Hamburg and make a satisfactory stowage of the ship for discharge at Cardiff, first. Your Hamburg and your Rotterdam cargo, consisted of considerable light stuff, which could not have been stowed under wine; your wine would have pressed and broke it down, and you would soon have your cargo adrift, which would have perhaps capsized your ship.

Q. Where would you stow the wine?

A. Wine is invariably given, as [215] near as possible, the lower hold stowage, and unless your ship is sufficiently stiff to take your wine or heavy dead weight cargo, whether it be wine or any other class of dead weight cargo, you could not put wine alone in the shelter-deck of a ship and put light general merchandise below; it would not be safe or proper stowage from a weight standpoint. That is the first thing. And the second thing is, your wine is what is termed "wet cargo," and in case of broken packages your wine would run down and damage your general merchandise cargo and you are up against severe claims which the ship must

(Testimony of Fred A. Hooper.)

stand. You cannot stow wet cargo on top of dry cargo.

Q. And I take it that testimony applies also to the stowage of bean oil?

A. Bean oil is considered wet cargo. Unless, as I say, your ship is in such shape and she is sufficiently stowed so that you have her well ballasted, or well stiffened, ordinarily oil would go below; but there are instances when you can stow a limited amount of wet cargo under your shelter-decks by properly protecting it with dunnage and sawdust, and by putting it in the wings of the ship where, in case of leakage, she will drain off.

Q. And I take it that your testimony with regard to proper stowage applies to brandy, as well as to bean oil and to wine: Is that correct?

A. That is correct.

Q. What weight did this ship have on board, do you know?

A. I cannot recall. I know when she left the canal she was supposed to have had full bunkers, which I believe was in the neighborhood of some 13,000 barrels of oil, perhaps 150 tons—that is long tons—say about 190 tons of fresh water; about 200 tons of stores. Her oil would have been about 1,200 or 1,300 tons, I believe, something in that neighborhood, and her cargo about 4,000 odd tons.

Q. The cargo on the "West Aleta" consisted in the main of this wine, [216] the brandy, the bean oil, and the rice, didn't it, or do you know?

(Testimony of Fred A. Hooper.)

A. I believe it did. Wine was the great bulk of the cargo, wine and rice.

Q. You remember testifying in the Eastern case before Judge Hand, as a witness, do you not?

A. Yes.

Q. I have here a certified copy of the transcript. I want to show you this portion of it, reading from page 44:

> "Q. And general cargo, rice, and nutmeg, etc.?
>
> "A. Well, rice is ordinarily dead weight cargo, as well, and that should go in the lower holds, but you seldom would put rice in with what we term wet cargo, this barrel goods, oil."

Do you remember giving that answer at that time? A. Yes.

Q. And it is correct, is it not? A. Yes.

Q. What was the cargo-carrying capacity in dead weight tons of the "West Aleta," if you know?

A. I think she was 8,800 deadweight.

Q. The cargo that was on the "West Aleta" was between 4,000 and 5,000 tons, was it not?

A. I would prefer, if we are going to get down to try to check her weight against the deadweight of the ship, if it is possible, to refresh my memory from definite figures. She has—

Mr. GRAHAM.—I think that is in the stipulation of facts, Mr. Mannon.

Mr. MANNON.—Yes, I think that is in the stipulation. I simply wanted to bring out that the

(Testimony of Fred A. Hooper.)

carrying capacity was 8,800, and she had between 4,000 and 5,000 tons of cargo.

A. (Continuing.) You understand that the 8,800 deadweight does not mean that her capacity for cargo is 8,800; you understand that, don't you?

Q. I wanted you to testify to that; I understand you have so testified.

A. The 8,800 deadweight means her total lifting [217] capacity, including her oil and fresh water, and stores, supplies, etc., the weight of which must first be deducted from her deadweight before you can arrive at the amount of tonnage you can put in the ship. And also that varies according to your oil and the length of the voyage accordingly.

Q. I asked you, then, a question as to what the cargo-carrying capacity in deadweight tonnage of that ship was.

A. The cargo-carrying capacity of a ship varies according to the voyage which she is going to make, and according to the amount of stores, water and oil you have to put aboard the ship; the same ship, in an intercostal voyage from here to New York will carry a greater deadweight—it is possible to put a greater deadweight cargo into her than the same ship would take in going on a voyage to Europe. And perhaps that same thing will vary again if you wanted to send that ship to Valparaiso. It all depends on what voyage you are sending the ship on, as to what her deadweight carrying capacity is.

Q. Of course, you are conversant with the "West

(Testimony of Fred A. Hooper.)

Aleta," or, rather, you were at the time she went out of here with this cargo on board?

A. In a general way.

Q. Are you conversant with her sufficiently to make a statement as to what cargo in tons she was capable of carrying at that time to Europe.

A. To Europe, with full bunkers—you have to give me a problem which must be made clear; you cannot ask a question as to what she could take to Europe unless you also say under what conditions. If you will give me the conditions under which you want to put a cargo into the ship; I will endeavor to give you, to the best of my ability, an answer as to what tonnage she might lift.

Q. Take the conditions under which she left San Francisco. You have been testifying about the showage of the ship, and about a [218] lot of details; in order to give that detail you have to know about the ship, don't you? A. Yes.

Q. And about her cargo? A. Yes.

Q. And about where she was going? A. Yes.

Q. Now, in the same way, bearing in mind the same ship, the "West Aleta," going out of San Francisco, destined for ports she was directed to go to, can you tell us what her cargo-carrying capacity in tons was?

A. Yes, but I cannot carry all the figures in my mind. If I can have a scrap of paper I will figure it out for you as closely as possible. I would say in the neighborhood of 6,700 short tons, tons of 2,000 pounds, would be her carrying capacity.

(Testimony of Fred A. Hooper.)

Q. These ships that were allocated to you by the Shipping Board were all of the 8,800-ton variety ships, were they not?

A. No, sir; there were a number of 8,800, there were some 9,400, some 9,600, some 10,000, and some larger than that.

Q. As to these 8,800 ton ships that you had to run to Europe, the most important thing you had to know about them was how much cargo they would carry, wasn't it?

A. Certainly, I had to know how much cargo she would carry, both from her weight standpoint, as well as from her measurement standpoint. That must be taken into consideration, too, along with her deadweight. You may have a ship filled with bulk cargo which will not anywhere reach her deadweight capacity. You might have a ship that would be down to her marks long before her space is filled up. So you have to consider your cargo both from a deadweight standpoint, as well as from a measurement standpoint. You could put 6,700 weight tons in that ship, the chances are, but you could not put 6,700 measurement tons in the ship—that is, I mean of bulk cargo. Your cargo, as an ordinary thing—cargo to Europe, as an ordinary thing, will stow on an average 60 to 70 feet to the ton. [219]

Q. It is a fact so far as you know, is it not, that the "West Aleta" was making the second voyage out of this port for Europe at the time she left here? A. Yes.

(Testimony of Fred A. Hooper.)

Q. On her first voyage she had gone to Hull first, and then to Hamburg, had she not?

A. I believe so. I tried to check that for you this morning, Mr. Mannon.

Q. And then came back to San Francisco, to Pacific Coast ports? A. Yes, sir.

Q. It is a fact also, is it not, that on June 27, 1919, and cognate dates, the "West Aleta" was advertised, however, for other ports; I mean by that she was advertised in "The Guide" to go to Copenhagen direct. You probably don't remember that at this time, Mr. Hooper, but that is a fact according to the file of "The Guide."

A. Well, if you say so, Mr. Mannon, I am willing to admit it.

Q. I merely wanted to call your attention to the fact that the advertisement at that time did not check with where you actually sent the ship; have you any explanation of that?

A. Other than the Copenhagen cargo which, perhaps, was originally offered to warrant us in announcing the ship for there, to go there, for some reason or other—what we term in shipping circles—fell down, it did not develop, and we were obliged to cancel the Copenhagen call and seek cargo in other directions. Being a tramp line, it was our privilege to do that.

Q. The European-Pacific Line, as a matter of fact, was not established until June 7, 1919, was it?

A. I believe we had ships out in March, 1919, according to the records that I located.

(Testimony of Fred A. Hooper.)

Q. What ships were they?

A. I prepared a statement for you as requested last night, Mr. Mannon, you and Mr. Graham.

Q. This record that you provided here is one which shows what ships of the European-Pacific Line had gone out prior to the "West [220] Aleta"?

A. It shows the ships we had sent to Europe prior to the "West Aleta" in general merchandise cargo. I want that statement qualified on this point, that during the war we sent, or I sent a great many ships to Europe. In other words, I want to qualify so that it will be understood that I had experience in European ports prior to the sending of these particular ships.

Q. What I am getting at is, Mr. Hooper, the origin or genesis of the European-Pacific Line.

A. I understand that; I say yes.

A. And these ships constitute all of the ships of that line that had gone out of San Francisco for European ports? A. Prior to the "West Aleta."

Q. And these ports that you have given are the ports of destination, San Francisco being the port of departure?

A. San Francisco, in most every instance, via San Pedro; I just show the San Francisco date. Practically every ship went to San Pedro, and then proceeded from San Pedro.

Q. And some of them came from the north, also, didn't they?

A. Some of them did, and some of them did not;

(Testimony of Fred A. Hooper.)

some of them originated here. In nearly every instance, though, they went to San Pedro.

Q. Perhaps it will aid to read this into the record; will you just read that into the record?

A. If you want it in the order of dates I will have to check it.

Q. Well, for instance, what is this?

A. This is Voyage 50, "Bakersfield," from San Francisco, December 7, 1919, for London.

"Effiingham," Voyage 50, from San Francisco, December 17, 1919, Hamburg, London, Liverpool.

"West Cayote," Voyage 50, from San Francisco, September 7, 1919, Havre, London.

"West Catan," Voyage 50, from San Francisco, October 21, 1919, Havre, London. [221]

"Cockaponset," Voyage 50, December 28, 1919, Havre, Antwerp, Thameshaven.

"Consumset," Voyage 50, August 28, 1919, Liverpool.

"Dewey," Voyage 50, November 18, 1919, Bristol, Liverpool, London.

"Eelbeck," Voyage 50, September 6, 1919, Liverpool, London.

"Orani," Voyage 50, October 29, 1919, London, Liverpool, Glasgow.

"Coloma," Voyage 1, May 29, 1919, Hull.

"West Aleta," Voyage 50, August 10, 1919, Hull, Hamburg.

"Wakanna," Voyage 1, March 29, 1919, Falmouth, Danzig.

(Testimony of Fred A. Hooper.)

"West Aleta," Voyage 51, January 6, 1920, Hamburg, Rotterdam and Cardiff.

Q. Where you say "Voyage 50," the "50" designates the first voyage of the ship?

A. Yes; that is the number we started with.

Q. And "51" denotes the second voyage?

A. Yes, the second voyage.

Q. I notice in two of these, the "Coloma" and the "Wakanna," you designate them as Voyage 1; what difference does that make?

A. No difference, except that we adopted a different method of indicating the original voyage later on.

Mr. MANNON.—In connection with the testimony of this witness, I offer this list in evidence and ask that it be marked our exhibit next in order.

(The document was here marked Libelant's Exhibit 11.)

Q. You said in your direct examination that you had a conversation or conversations with Mr. Jenks in connection with the space engagement for these vessels, telling him something about where the vessels were going; am I correct in that?

A. Yes.

Q. Bearing that in mind, I wanted to call your attention to this letter of November 25, 1919, and ask you if you wrote that letter to the California Wine Association, and if it has to do with this [222] space engagement we are talking about here.

A. I did not write this letter, nor did I sign it; my stenographer wrote it without dictation, and in

(Testimony of Fred A. Hooper.)

the ordinary course of handling details. That is her signature. It was written without dictation.

Q. Are you able to state that that letter did come from your office? We produce it from the files of the California Wine Association. (Addressing Mr. Graham:) Do you make any point about it, Mr. Graham?

Mr. GRAHAM.—No, I do not.

Mr. MANNON.—I want to offer the letter in evidence.

A. Yes, that came out of my office.

Q. And it bearing the date November 25, your space engagement was sometime earlier, I presume —either that day or earlier?

A. That day or earlier, yes.

Mr. MANNON.—I offer this letter in evidence and ask that it be marked Libelant's Exhibit 12.

(The letter was here marked Libelant's Exhibit 12, and is as follows:)

LIBELANT'S EXHIBIT No. 12.

(Letter-head of Williams, Dimond & Co.)

"San Francisco, November 25th, 1919.

No. 500–EO

"California Wine Association,
216 Pine Street,
San Francisco.

"Gentlemen:

SS. 'WEST ALETA.'

"This will confirm reservation of space for your account covering shipment of 10,000 barrels of Wine to be forwarded from here to Cardiff on the

(Testimony of Fred A. Hooper.)

above-named steamer. This will also confirm reservation of space for your account covering shipment of 4,000 barrels of Wine to be forwarded from here to Rotterdam on the above-named steamer.

"The rate on Wine, in barrels, is $2.10 per 100 lbs., applying [223] from ship's side San Francisco to ship's side Cardiff, and $2.35 per 100 lbs., applying from ship's side, San Francisco, to ship's side Rotterdam.

"Thanking you for this business and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.,

"Managers & Operators,

"F. A. HOOPER, O.,

"General Freight Agent."

The WITNESS.—May I see that letter again, please? That is all right.

Mr. MANNON.—Q. Have you seen what you desire in connection with it, Mr. Hooper?

A. Yes.

Q. What was the name of the individual who signed that letter? A. Miss E. M. Olsen.

Q. What name is it signed by?

A. F. A. Hooper, per O.

Q. That was in the ordinary course of business, I take it?

A. In the ordinary course of detail, yes.

Q. When you had this conversation or conversations with Mr. Jenks of the California Wine Association, who else were present?

(Testimony of Fred A. Hooper.)

A. We had several conversations. In some cases Mr. Jenks was alone; in other cases, Mr. Sheehan, his assistant, was present. Some conversations were held as to detail, that is, pertaining to minor details, with Sheehan, himself.

Q. Where were they held, do you know?

A. In Mr. Jenks' office, so far as the personal conversations were concerned. There were telephone conversations; where Mr. Jenks was when he telephoned, I don't know, but I presume in his own office.

Q. You mentioned other lines that were running out of San Francisco at or about the time the European-Pacific Line was running; one of them that you mentioned was the Harrison Line: You remember that, don't you? A. Yes. [224]

Q. The Harrison Line, as a matter of fact, only ran its ships to United Kingdom ports, did it not, prior to the time the "West Aleta" went out?

A. Well, I would not say that they only ran to the United Kingdom prior to the time the "West Aleta" went out; I do not know definitely, but I do know that they ran to both United Kingdom and Continental, somewhere along in that time; whether it was before or after the "West Aleta" voyage, I do not know.

Q. Then, so far as you know, it is a fact, is it not, that the Harrison Line ships only ran to United Kingdom ports, either London or Liverpool, in the year 1919 and prior to the time the "West Aleta" went out?

(Testimony of Fred A. Hooper.)

A. No, I won't say that that is a fact. I don't know that.

Q. You don't know whether it is a fact, or not?

A. No.

Q. So that in you testimony of yesterday, your testimony of yesterday would have to be modified to that extent, so far as the Harrison Line boats were concerned, that they did not run to the Channel ports at all, other than the English ports, and the only English ports they ran to were London and Liverpool, so far as you know?

A. No, I say they also included continental ports. I do not know as to the dates, I cannot give you the dates, but I know that they ran to continental ports occasionally, as well as their regular U. K. ports.

Q. It will save time if you can give me an answer to the question, Mr. Hooper. I want to know whether you are willing to testify that in the year 1919 and prior to the time the "West Aleta" went out on this voyage the Harrison Line sent any ships out of San Francisco to any European ports other than London and Liverpool?

A. I do not know, but I believe so.

Q. You have no knowledge on the subject?

A. No direct knowledge.

Q. Do you want to be understood as testifying that the Harrison Line, in the year 1919, sent any ships out of San Francisco to [225] any ports other than London and Liverpool, in Europe?

A. I am willing to be recorded as saying this,

(Testimony of Fred A. Hooper.)

that definitely I do not know, but I believe they did at or about that time.

Mr. MANNON.—If your Honor please, I move to strike out so much of the answer as saying "but I believe they did." I am entitled to an answer one way or the other.

The COURT.—I will deny the motion.

Mr. MANNON.—Q. Referring to the Harrison Line, in the year 1919 were there any ships that went out of San Francisco to European ports carrying cargo other than the "Professor," the "Crown of Toledo," the "Musician," the "Crown of Galicia," the "Orator," the "Crown of Cadiz," and the "Architect." A. I don't know.

Q. Did any one of those ships that I have mentioned touch at any port other than London or Liverpool. A. I cannot recall at this late date.

Q. But you are not able to testify that any ships of the Harrison Line did touch at any ports other than London and Liverpool, out of San Francisco, in the year 1919, are you?

A. At this late date I cannot recall.

Q. Another of the lines you mentioned was the line that was run by E. C. Evans & Co., to replace the Maple Leaf Line: You remember mentioning that line, don't you? A. Yes.

Q. Will you state whether you have any knowledge as to whether any ships of that line in the year 1919 went to any European ports other than United Kingdom ports?

A. I cannot recall at this time. I will say this,

(Testimony of Fred A. Hooper.)

I do not think they ran to any place but United Kingdom ports. Evans was purely a Bristol Channel operator. I do not think they went to the continent; they may have, but I don't think so.

Q. The fact is that you don't know where those ships went, isn't it?

A. I am not able to remember. [226]

Q. And so you cannot testify about it?

A. I can testify to the best of my knowledge and belief, but I cannot be very definite about it.

Q. Were there any ships, if you know, out of San Francisco, by the Evans Line, other than the "Darrah," the "Astoria," the "Berrington," and the "Fort Logan"?

A. I cannot recall. I know that a couple of those ships we were managers of, but they were operators of.

Q. So you cannot name any other ships of the Evans Line, or any other ships, that went out of San Francisco, other than the ones I have just named?

A. I have no way of having access to their confidential or other records to see what ships they had an interest in.

Q. All of these ships that I have named went to but a single port, that is, each of those ships went to but one port in the United Kingdom?

A. The two ships that we were managing operators of, those I am in a position to know something about, went only to one port, I believe; the other ships operated by Evans I was not sufficiently in-

(Testimony of Fred A. Hooper.)

terested in them to follow their schedule through all their United Kingdom ports. I know in a general way they went to Europe, to the United Kingdom.

Mr. MANNON.—I move to strike out that answer, all of it, on the ground that it is not responsive to the question.

The COURT.—Motion granted.

Mr. MANNON.—Will you read the question Mr. Reporter?

(Question read by the Reporter.)

A. I will give you a fifty-fifty answer; yes on two of them; two I don't know.

Q. And those ships all carried full cargoes of barley, did they not? A. I do not know.

Q. You testified about the East Asiatic Company having ships out [227] of this port in the year 1919 prior to the sailing of the "West Aleta"; it is a fact, is it not, that there were not any ships out of this port of the East Asiatic Line in the year 1919 for any ports except Scandinavian ports?

A. Did I answer the question—was your question put to me that the East Asiatic operated ships in 1919, or was it just the lines that operated to Europe?

Q. Perhaps you had better state what the fact was in the year 1919 about the East Asiatic Company.

A. Well, I cannot recall just what the East Asiatic Company did in the year 1919; they were European operators.

Q. You just don't know whether they had any

(Testimony of Fred A. Hooper.)

ships out of San Francisco for any European port in the year 1919, do you?

A. I just can't recall at this time.

Q. As a matter of fact, then, referring to the East Asiatic Company, the "Siam," which left San Francisco on November 21, 1919, is the only ship of the East Asiatic Company out of this port for European ports in the year 1919: Is that correct? A. I cannot recall.

Q. You don't know? A. I cannot recall.

Q. Can you recall any others? Did you answer that question, Mr. Hooper?

A. I am trying to get you. No, I would rather not attempt to give any definite dates of sailing or name any particular ships; I cannot remember at this late date.

Q. So you just don't know?

A. I just cannot recall, I cannot remember.

Q. And when you say you cannot remember you mean you don't know at the present time?

A. I mean I cannot remember at the present time. I know they had services operating, but as to what dates their ships left, and the names of the ships, and what ports they went to, and the cargoes they carried, I cannot recall at this time. [228]

Q. You say that this line to which I have just referred, the East Asiatic, had a service out of San Francisco during the year 1919 for European ports.

A. I did not say they had a service during 1919.

Q. That was what I want to find out. Will you say they did not have one during 1919?

(Testimony of Fred A. Hooper.)

A. I did not say they did not have one, either I said they were European operators, but I don't recall whether their sailings occurred in 1919 or not.

Q. You just don't know whether the East Asiatic operated out of this port in 1919, do you?

A. I know this, that they maintained their office and organization during 1919, and whether they sat doing nothing, or operating ships I don't know; but their organization was full and complete in 1919.

Q. Is it not a fact that the office organization of the East Asiatic Company commenced in San Francisco in the month of October, 1919?

A. No, I believe the East Asiatic, if I can remember correctly, was in—oh, I don't know as to just when they started; I know they had an organization here at that time.

Q. So that you just cannot testify about that. Now, what is your situation in regard to the Norway-Pacific Line; are you able to testify about their running any ships out of San Francisco for European ports in the year 1919?

A. I don't recall at this time what ships they sailed in 1919 or whether they sailed any, but they were in the service prior to the war and since the war.

Q. What is your situation with regard to the Johnson Line. Are you able to testify whether they operated any ships out of San Francisco for European ports in the year 1919?

A. I believe the Johnson Line did. They were

(Testimony of Fred A. Hooper.)

very active right along. They may not have sent a ship out—I am hazy as to that—but their organization was here at that time. [229]

Q. Give me your recollection on that, Mr. Hooper, did they or did they not send a ship out of San Francisco to European ports in the year 1919?

A. Oh, I cannot tell you definitely at this time.

Q. And your situation is the same with regard to the Holland-American Line, is it?

A. I don't think the Holland-American Line was in operation here in 1919; I think they came into the picture later than that.

Q. Do you know who had charge of advertising for Williams, Dimond & Co.?

A. Partially myself, and partially—just what do you mean, in charge in what way?

Q. In charge of putting advertisements in a newspaper for shipping.

A. I did part of it, and Mr. Howland did part of it.

Q. Is he with you now, do you know?

A. He is with the American-Hawaiian Steamship Co. now.

Q. In what papers did you put advertisements, if any? A. I handled principally "The Guide."

Q. And that is true in regard to paying "The Guide," or O. K.-ing the bills for "The Guide," is it?

A. In some instances I O-K.ed the bills, and in some instances I did not.

(Testimony of Fred A. Hooper.)

Q. Who had charge of the stowage of the "West Aleta" on this voyage?

A. Captain Rinder was the surveyor for that ship, together with myself handling stowage, together with the ship's officers and the port captain —Captain Will Curtis.

Q. What was the reason the "West Aleta" went to Hamburg first?

A. Because that is the way she was scheduled to go.

Q. What was the reason she was scheduled to go to Hamburg first?

A. On account of cargo offerings; furthermore, the class of cargo that was in the ship.

Q. On account of what cargo offerings?

A. The general cargo offerings outside of the wine for Cardiff. [230]

Q. Did that have anything to do with any of the homeward-bound cargo? A. Quite a good deal.

Q. Where was the homeward-bound cargo that affected the schedule of the ship?

A. The homeward-bound cargo was always engaged on the other side; the most fertile ground to pick up homeward-bound cargo at that time, we had a slight chance to get some at Rotterdam, and the balance, whatever we could get at that time, which was very little, if any, the best ports were the United Kingdom ports, Channel ports.

Q. Why was the ship scheduled to go to Rotterdam after she left Hamburg?

A. That was more desirable because we had

(Testimony of Fred A. Hooper.)

Rotterdam cargo for discharge there, and the probabilities were that we were more apt to get a little outward cargo at Rotterdam. The expectations were not very great, we did not expect much.

Q. Where did you expect to get the cargo, though, really—at Rotterdam?

A. We expected to get the bulk of our cargo at that particular time when the "West Aleta" returned in early 1920, we expected to get the *the* bulk of the cargo, whatever we could get, at United Kingdom ports. Europe was torn at that time, and was not producing very much.

Q. When was the "West Aleta" scheduled first to go to Hamburg at all, if you know, upon this voyage?

A. I cannot recall the exact date at this time.

Q. You are the particular individual who directed the ship to go to Hamburg, are you not? A. Yes.

Q. And, as a matter of fact, did you not direct her to go to Hamburg first on December 3, 1919?

A. I cannot recall that now. That is a mere detail that would not make much of an impression on my mind.

Q. As a matter of fact, you had originally destined that ship for Cardiff and for Rotterdam, and not for Hamburg, had you not? [231]

A. I cannot recall that, either, because the ship went to different ports, and it is very difficult, after a lapse of four years' time, to try and recall why I said Hamburg for this ship on December 5, or on December 2d, or on any other date.

Q. Possibly I could refresh your recollection a

(Testimony of Fred A. Hooper.)

little. As a matter of fact, the reason the ship went to Hamburg was because Rosenberg offered you some rice to go to Hamburg?

A. That may have been a governing factor.

Q. And they made that offer to you on December 3, 1919. A. I don't know.

Q. So far as you know that may be the fact, but you are not clear about it?

A. I do not know when they offered that; I could not state.

Q. In that list, Mr. Hooper, I notice the "Coloma" went out at the end of March, 1919, on Voyage 1; she went to Falmouth and to Danzig; was that a general cargo ship, or a relief ship?

A. Her Danzig cargo, I am satisfied, was American Red Cross cargo, as near as I can remember now. I think she went into Falmouth for orders or for fuel. I don't ever recall her handling cargo to Falmouth. She went into Falmouth for some purpose other than cargo, I believe, either fuel, or for orders, or something of that kind.

Mr. MANNON.—That is all right.

Mr. GRAHAM.—With your Honor's permission, and if it meets with the approval of Mr. Mannon, I would like to put Mr. Chandler on the stand for about five minutes before taking up the redirect examination of Mr. Hooper.

Mr. MANNON.—That is all right.

The COURT.—It is satisfactory to me.

(The witness was here temporarily withdrawn.)

[232]

TESTIMONY OF C. H. CHANDLER, FOR RESPONDENT.

C. H. CHANDLER, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you now associated, Mr. Chandler?

A. Sudden & Christenson.

Q. With whom were you associated in 1919 and 1920? A. Sudden & Christenson.

Q. What is your position and what was your position at that time?

A. My present position is manager of the shipping department.

Q. What was your position in 1919 and 1920?

A. Manager of the New York office.

Q. In New York? A. In New York City.

Q. When did you return to San Francisco?

A. June, 1920.

Q. How long had you been in New York previous to that time? A. June, 1919.

Q. Then you were in San Francisco before June, 1919? A. Yes.

Q. You were away approximately a year, then?

A. Yes.

Q. And during that year when you were away, you were able to familiarize yourself fairly well with New York shipping conditions, were you not?

A. Yes, in a measure.

Q. How long have you been concerned with shipping matters in San Francisco?

(Testimony of C. H. Chandler.)

A. On the Pacific Coast for 22 years; San Francisco since 1918.

Q. Are you engaged both in the steamship business and the business of shipping cargoes?

A. Yes, sir.

Q. At the present time is your company the agent of the United American Lines? A. Yes, sir.

Q. When did they start operating?

A. They started operating their intercoastal service in September, 1924.

Q. I understand that they are also engaged in the service from the Pacific Coast of North America to Europe and continental ports? A. Yes, sir. [233]

Q. When did they start that service?

A. I don't know.

Q. You are familiar with the operation of those vessels in that service now, are you? A. Yes, sir.

Q. In general, can you just make a brief statement as to what the practice of those vessels is relative to calling at ports of call?

Mr. GRIFFITHS.—Just a moment before you answer that question, Mr. Chandler. Are you referring, Mr. Graham, to the operation of these vessels now, in the year 1924?

Mr. GRAHAM.—Yes.

Mr. GRIFFITHS.—We object to that as immaterial, irrelevant and incompetent, your Honor, the custom prevailing now will not establish what the custom was prevailing in 1919 or 1920.

Mr. GRAHAM.—I merely want to show, your

(Testimony of C. H. Chandler.)

Honor, that this custom not only prevailed in 1919 and 1920, but has continued down to the present time, without any objection from shippers, and that if there had been any objection the custom would have been discontinued. I am putting Mr. Chandler on the stand out of order.

The COURT.—I will overrule the objection.

A. In our service we operate from a usual range of Pacific Coast ports to a usual range of U. K. and continental ports. It is our practice, in advertising our itinerary, to name the ports of discharge in our advertisement in the rotation of the vessel's call.

Mr. GRAHAM.—Q. In what order do they generally call, or have you any order of call? Is it geographical, or out of the geographical order?

A. Sometimes it is geographical. We don't give that any consideration, we go where the cargo offers.

Q. The geographical order is not given consideration? [234] A. No consideration whatever.

Q. What shipping paper in San Francisco do you advertise in?

A. "The Guide," the "Commercial News."

Q. As to "The Guide," you have just testified that you advertise in "The Guide" the route that the vessel is taking; do you consider that that is notice to shippers as to the route the vessel is going to take? A. Yes, sir.

Q. You rely on "The Guide," do you, as your means of advertising and notice? A. Yes.

Mr. GRIFFITHS.—I object to this as leading.

(Testimony of C. H. Chandler.)

The COURT.—It is leading, but I will allow it.

Mr. GRIFFITHS.—I think he has already answered the question, anyway.

The COURT.—Yes, he has.

Mr. GRAHAM.—Q. I show you here a bill of lading, it has been introduced in evidence in this case, it is a Shipping Board bill of lading, Pacific Form, and has to do with this case and with this ship; are you familiar with the form of bill of lading? Have you used that Pacific Form Shipping Board Bill of Lading? A. Yes, sir.

Q. You have used it? A. Yes, sir.

Q. And you know the terms of it in a general way? A. In a general way.

Q. Will you please read it from where I point, will you read it from here on?

A. "And to touch at any port or ports, in any rotation or order in, or out of, the customary route, and to call at any port or ports more than once, to transship either by rail, lighter or otherwise."

Q. Having read that clause, with which you are familiar and have been familiar in the use of that bill of lading, what is your construction of that clause as the construction of a commercial [235] document by one who has dealt with the bill of lading in the shipping world—what is your construction of that clause as to the right of the ship to make a certain voyage or to go out of her geographical order?

Mr. GRIFFITHS.—I object to the question as immaterial, irrelevant and incompetent, as calling

for the conclusion of the witness, and as calling for the construction by the witness of a provision well recognized in bills of lading, a provision which has been repeatedly interpreted and construed by the courts. Yesterday Mr. Mannon read to your Honor a decision from one of the English courts of highest authority, in which a whole series of these so-called deviation clauses were considered, and the court stated precisely that all of them had been judicially construed.

Mr. GRAHAM.—If your Honor please, the purpose of introducing the testimony of Mr. Chandler at this time is to show the construction of what is to our minds a clause which has heretofore been unconstrued by this Court. As I called to your Honor's attention yesterday on the question of the introduction of parol evidence, this deviation clause is the clause under discussion in this case. In contravention to the cases Mr. Mannon cited yesterday, I cited your Honor to the case of the Savannah Naval Stores, 255 Fed., in which extraneous evidence was introduced; and in that particular case, a clause almost identical with this, the Courts held that there was no deviation. In case there is an ambiguity in a commercial document, which we contend is the case here, we further contend that we have the right to introduce extraneous evidence, as the opinion of shippers, the construction of shippers, people who have actually used this bill of lading, as to what this clause means. The clause is under [236] construction in this court. It has

not been heretofore construed, save and except in the case of the "West Aleta" in New York, which case is now on appeal.

The COURT.—Can you hand him that document and ask him what his construction is of part of it?

Mr. GRAHAM.—I will give him the whole document if your Honor wishes.

The COURT.—Could you do that? Isn't that a question of law for the Court?

Mr. GRAHAM.—I believe that in the construction of a commercial document the interpretation of users of that document is to be considered by the Court. Of course, I appreciate that the final construction of it is for your Honor.

The COURT.—You may ask him what the testimony is relative to a certain matter. It does not seem to me you would have a right, in a court of law, to hand him a writing and ask him for his construction of the document, or any part of it.

Mr. GRAHAM.—In this case, I believe we have already introduced testimony, and testimony has been adduced, to show there was a custom to go in other than the geographical route. Now, in such a case I believe we can go further and show what the contract is; in other words, what the construction of the contract is. The question in this whole case in the construction of this deviation clause.

Scrutton, on page 23 of his work on charter-parties and bills of lading, in speaking of customs, says:

"To this there is an exception that customs of

trade which regulate the performance of the contract, but do not change its essential character, are tacitly incorporated in the contract, though not expressed in it, on the ground that the parties to [237] the contract must be presumed to have contracted with reference to such customs."

And on page 17, on the subject of "Construction of contract," he says:

"The construction of a charter or bill of lading is for the court, unless there is mutual mistake of the parties, ambiguity, or some peculiar meaning attached to the words of the document by reason of the custom of the trade or port to which the document relates."

We believe there is an ambiguity. We have already brought in the custom. We believe further we may introduce testimony to show the construction given to this particular document. Where that document is ambiguous it is for the Court to hear the testimony and decide what the construction of that bill of lading is. It is difficult to see how a Court can construe a document in commercial usage without knowing the construction which has been given to that document by its users. Mr. Chandler testifies he is familiar with it, and has used it, and knows all about it.

The COURT.—And that the provision is usual in these bills of lading?

Mr. GRAHAM.—Not necessarily, your Honor; no. Deviation clauses are not so usual that there can be said to be any established law on what one

(Testimony of C. H. Chandler.)

or another deviation clause is. I cited to your Honor yesterday the case in 255 Fed. which construed the clause to allow a certain deviation. Mr. Mannon cited to your Honor other cases which construed it as not allowing a particular deviation.

The COURT.—I will sustain the objection to this question, but if that provision is one frequently used, you might ask the witness what was the practice under such a provision. Your [238] present question bluntly asks him for a construction of that provision of the document. Objection sustained.

Mr. GRAHAM.—Q. Mr. Chandler, do you know what the custom was of steamship companies operating out of here, and with which you had dealings, acting under this bill of lading, in the deviation clause contained therein as to making ports in any particular order, in or out of geographical order?

Mr. GRIFFITHS.—We object to that question unless it is directed to the custom in the year 1919.

Mr. GRAHAM.—I will limit it to 1919, Mr. Chandler.

Mr. GRIFFITHS.—If he knows what the custom was then.

A. That bill of lading was used by ourselves as managing operators for the Board, and we were also tendered that bill of lading as shippers of cargo to European and other ports, and we raised no objection to that wording. It was our opinion that we were amply protected, and that the vessel had the right to deviate.

(Testimony of C. H. Chandler.)

Mr. GRAHAM.—Q. That is, to go out of her geographical order? A. Yes.

Mr. GRIFFITHS.—Just a moment, Mr. Graham. I object to these questions as leading. He has already answered this question, but I object to the examination as leading.

Mr. GRAHAM.—Q. Were you familiar with the voyage the "West Aleta" took on this particular occasion? A. No, sir.

Q. I call your attention to the fact that the voyage which she took and which it is stipulated in the stipulation of facts, was in this order, the voyage which she intended to take was in this order: Hamburg, Rotterdam and Cardiff, which, if you will recall the geography, is out of the geographical order; had you any experience with shipments, as a shipper and not as a ship [239] operator, with vessels engaged in this European trade at that time? A. Yes.

Q. What would be your idea of your right as a shipper, operating under this bill of lading, on such a shipment as the "West Aleta" made?

Mr. GRIFFITHS.—We object on the ground that it is not competent to ask the witness for his idea of his right as a shipper.

The COURT.—Well, according to the custom prevailing in 1919: That is what he means.

Mr. GRAHAM.—Q. Just answer the question now, with that addition by the judge.

A. We would have raised no question to the ves-

(Testimony of C. H. Chandler.)

sel's itinerary if we had a shipment on there for Cardiff.

Q. In other words, you would consider that the "West Aleta" was acting within the scope of her authority? A. Yes—

Mr. GRIFFITHS.—Just a moment. We object to that question, your Honor, as leading.

The COURT.—I think it is leading, yes.

Mr. GRIFFITHS.—I think you ought to ask the witness to tell the story, Mr. Graham, instead of putting it in his mouth by questions calling for "Yes" or "No" answers.

The COURT.—The objection is sustained and the answer is stricken out.

Mr. GRAHAM.—Q. In the case of the "West Aleta," had you had Cardiff cargo on board, what would you have considered her rights?

Mr. GRIFFITHS.—We object to that as speculative and calling for a hypothetical situation, and as immaterial, irrelevant and incompetent.

The COURT.—What would have been the right of the steamer according to the custom prevailing at that time in the year 1919. [240]

A. We would have considered the steamer had the right to make her advertised ports of call in rotation. If we had had a shipment for Cardiff and the ship was advertised for Hamburg, Rotterdam and Cardiff in succession, and if the shipment was of such nature that it did not require the first port of call discharge we would not have

(Testimony of C. H. Chandler.)

hesitated in tendering the shipment for such an itinerary.

Q. You say you would not have hesitated—was that according to the custom?

A. Yes, that was according to the custom as I understand it.

Mr. GRAHAM.—Q. From the point of view of a shipper? A. Yes.

Q. I show you a copy of "The Guide" of January 5, which was the day before the "West Aleta" sailed, and call your attention to this ad of Williams-Dimond, European Pacific Service, and show you in particular the schedule of the "West Aleta": Hamburg, Rotterdam, and Cardiff, and ask you if, as a shipper, it would have been your custom at that time to have gone to "The Guide" for information relative to the schedule?

A. Yes. That advertisement would convey to me that the ship was going in rotation, Hamburg, Rotterdam and Cardiff, and I would not even have raised the question or have verified it with the operator.

Mr. GRAHAM.—That is all.

Cross-examination.

Mr. GRIFFITHS.—Q. You would have expected her to *have gone Hamburg*, Rotterdam and Cardiff? A. Yes.

Q. Mr. Chandler, the European Line that you are operating now, that is to say, that Sudden & Christenson are operating, is what is called the United American Lines, is it not? A. Yes.

(Testimony of C. H. Chandler.)

Q. And that has been here only for a comparatively recent time, has it not, that European service? A. I do not know. [241]

Q. At any rate, your agency is of a most recent date, isn't it, only very recent?

A. From May 1st, 1924.

Q. That is the time that you took it over?

A. Yes, sir.

Q. You know nothing about that service prior to that time, do you? A. Only in a general way.

Q. You do know that even before your agency it had been very recently here, do you not?

A. I don't know how long it had been here. We were local agents for a year, or for six months prior to the time we took over the general agency, so that I know that it was here during that period.

Q. You advertised, Mr. Chandler, in the "Commercial News" as well as in "The Guide," did I understand you to say? A. Yes, sir.

Q. And your idea is that the shippers are entitled to rely on the advertisements in either paper? A. Yes.

Q. Do you happen to know when that typed form, as I understand you testified it to be, of the Shipping Board bill of lading was drawn, when it came out?

A. To the best of my recollection in May, 1918.

Q. Before the termination of the war?

A. Yes, because I was a party to the drawing up of that bill of lading. I think probably there were some alterations later.

(Testimony of C. H. Chandler.)

Q. What is its designation as to form number, do you know? A. I don't recollect.

Q. I understood you to say on your direct examination that you advertised your itineraries in rotation?

A. Yes, omissions excepted; sometimes we make an error.

Q. Does that mean that if the advertisements are not consistent the shippers are left without information as to where the vessel is going?

A. If we made an error we would correct it in the following issue of "The Guide."

Q. You would not let it stand? A. No. [242]

Q. And that applies also to the "Commercial News"?

A. Our arrangement with the "Commercial News" is to follow "The Guide." We don't pay much attention to that.

Q. You certainly, Mr. Chandler, feel a responsibility to the shippers if you put that advertisement in more that one paper, do you not, to see that the advertisements are correct, for the guidance of your shippers?

A. Yes, we have a certain moral responsibility.

Q. And you would consider it—there is not any question about this, is there, as a responsible operator of the United American Lines, you would consider it is a serious matter if you had advertised that in several places, not to show sufficient concern to see that they correctly represented your

(Testimony of C. H. Chandler.)

itineraries, and if there were any errors they would be corrected immediately?

A. We make that effort.

Q. You would feel that keen sense of responsibility? A. Yes.

Q. Because it follows, does it not, if you feel these advertisements are the guidance to your shippers, that obviously they must be a correct guidance? A. Yes.

Q. There is no question about your feeling on that score?

A. Although we consider "The Guide," as we call it, the shipper's bible, the rest of the advertising is more or less immaterial. "The Guide" is what is followed by the shippers here in San Francisco.

Q. But you do not mean by that—I know something about the way you conduct your business myself—that you would put out advertising elsewhere, and upon the theory that it was not the most important guide, simply allow it to lapse into error. You would follow it and check it, wouldn't you?

A. We have been guilty of that. [243]

Q. You have been guilty of that? A. Yes.

Q. But you consider it a guilt?

A. Yes. We have advertisements in monthly publications, etc., and really forget about them.

Q. But that is a lapse and a guilt; there is no question about that, is there?

(Testimony of C. H. Chandler.)

A. I think so, yes. I think there is a certain moral responsibility there.

Q. The United American Line vessels touch the northern ports, too, don't they, that is, Seattle, and they have been putting into Vancouver for grain, and all that sort of thing? A. Yes, sir.

Q. And I suppose you have similarly advertised up there? A. Yes.

Q. And what you so aptly put as your sense of moral responsibility would, of course, govern there, as elsewhere, that is, you endeavor to keep that standard up everywhere throughout this service, do you not? A. Yes, certainly.

Mr. GRIFFITHS.—I think that is all.

Redirect Examination.

Mr. GRAHAM.—In line with the testimony of Mr. Chandler, reference to ports of call, and just to show the contributing service of these vessels in the United American Line, I would like to have him read his ad to-day, just to show how they are continuing to rely on "The Guide" to publish the service, and how it doesn't run true to ports of call for every vessel, but runs to intermittent ports for various vessels; in other words, each vessel is not scheduled to go to London, Liverpool, Hamburg, it may be Bremen, it may be Hamburg, or even Bordeaux, I suppose, and that the advertisement shows that in each individual case.

Mr. GRIFFITHS.—In other words, that he expects to run according to his ads.

(Testimony of C. H. Chandler.)

Mr. GRAHAM.—Yes. We introduce this in evidence. [244]

Mr. GRIFFITHS.—We object to it, your Honor, as immaterial, irrelevant and incompetent.

The COURT.—This is what is being done now, do you say?

Mr. GRAHAM.—Your Honor has already allowed the witness to testify as to how their custom has continued up to the present time.

The COURT.—Very well.

Mr. GRAHAM.—I introduce in evidence a copy of "The Guide" dated December 29, 1924, and ask to have the same marked Respondent's Exhibit "D."

(The document was marked Respondent's Exhibit "D.")

Q. Just by way of calling to your attention what your ad does carry here, Mr. Chandler, would you mind reading to the Court the vessels and their notations as to route?

A. Steamer "Hessen," Hamburg, London, Hull, Antwerp.

Q. Is that in geographical order, or out of geographical order?

A. Out of geographical order. The steamer "Osaris": Liverpool, Hamburg, Antwerp.

Q. How is that with respect to geographical order?

A. That is out of geographical order. The steamer "Riol": Hamburg, Bremen, Antwerp.

(Testimony of C. H. Chandler.)

Q. How is that with respect to geographical order?

A. I would say that was out of geographical order. The steamship "Holger": Hamburg, London, Antwerp.

Q. How is that with respect to geographical order? A. That is out of geographical order.

Q. Have you named all the vessels sailing from here?

A. The "Sachsen": Hamburg, London, Hull, Antwerp. That is not in geographical order. The steamer "Isis": Hamburg, Antwerp; the same thing applies to that. The steamer "Montpelier": Liverpool, [245] Hamburg: That is geographical. The steamer "Kermit": Hamburg, London, Antwerp; that is out of geographical order.

Q. Is your intercoastal service covered in the same ad? A. Yes.

Q. Just state to the Court very briefly your manner of operating in the intercoastal service; I just want to show by this that in another service, your Honor, they operate out of geographical order.

Mr. GRIFFITHS.—It does not seem to me you can prove custom in that manner. By intercoastal service you mean, I presume, the service through the Canal, from here to New York. Your Honor is familiar with that by personal experience. I don't believe you can prove European custom by any intercoastal custom.

Mr. GRAHAM.—I think we will be able to show

(Testimony of C. H. Chandler.)

your Honor that it is not only the custom in the European service to call at ports from the Pacific Coast to Europe out of their geographical order, but I believe we will be able to show it was the custom to call at ports all around the world, across the Pacific, and in the intercoastal service, in the freight business. It must be distinctly understood that passenger service has nothing to do with this case. Passenger vessels are confined to ports of call in geographical order. I want to show your Honor the continual practice up to the present time, in order to show the general custom of going out of the geographical order.

The COURT.—I will overrule the objection.

A. We give no recognition whatever to ports of discharge in geographical order.

Mr. GRAHAM.—Q. Just in general, Mr. Chandler, will you name a couple of ports—

The COURT.—I think that answers the question sufficiently, Mr. Graham.

Mr. GRAHAM.—It answers it sufficiently to suit me, yes, [246] your Honor.

Q. You testified as to "The Guide" and the "Daily Commercial News"; do you consider the "Daily Commercial News" in the same light you do as the other daily papers?

The COURT—He has already covered that.

Mr. GRAHAM.—Q. Who handles the advertisements in Seattle for you—does your office here in San Francisco handle them, or are they handled by the office up in the North?

(Testimony of C. H. Chandler.)

A. Our office in the North.

Q. You testified you were a member of the committee which drafted this bill of lading, or one substantially like this one which you have now seen; what was that committee?

A. I think you misunderstood me, I was not a member of the committee. The United States Shipping Board in San Francisco caused that lading to be printed. The lading was drafted, and we proof read it and caused it to be printed—also the contract.

Q. Did you make comments on it, if there were any to be made? A. Typographical errors.

Q. Do you know what class of men composed that committee; that is, were they shippers, or what were they? A. I don't know.

Recross-examination.

Mr. GRIFFITHS.—Q. You adopted that clause, Mr. Chandler, so far as you had anything to do with its adoption, because you knew it to be a well-recognized and well-construed clause in bills of lading, did you not?

Mr. GRAHAM.—I object to that, your Honor, unless Mr. Griffiths confines himself to what is a well-construed and well-recognized clause.

Mr. GRIFFITHS.—I am leaving that for him to say. He has followed standard customs interpreted by the courts—

The COURT.—I will overrule the objection. [247]

(Testimony of C. H. Chandler.)

A. To be perfectly frank with you, I never gave any consideration or thought to that clause.

Mr. GRIFFITHS.—Q. So you don't know how that clause is construed or interpreted, though you do know what your custom is when operating under it; that is about all it comes to, isn't it?

A. Yes, sir.

Q. Now, if I get you correctly, your thought is that when you advertise a ship to go to a certain port, you are not bound by geographical order anywhere, so long as you reach that port, the way in which you go is absolutely within the ship owner's discretion?

A. We follow a common practice.

Q. That is what I am getting at. If you put a ship on the berth, here, and solicited my cargo to go to Honolulu, would you feel that you could go around through the Canal and work your way around the Canal and eventually discharge my cargo at Honolulu?

A. Well, I would feel that I would never get any more of it if I did that.

Q. You certainly would not. I am putting it in an extreme way, Mr. Chandler, because I think we are at one on the matter. What you mean when you say you can go in any geographical order is, any geographical order within the voyage contracted for; that is what it comes down to, isn't it? A. Yes.

Mr. GRAHAM.—You say within the voyage contracted for; you mean within a certain range?

(Testimony of C. H. Chandler.)

Mr. GRIFFITHS.—I object to that as leading.

The COURT.—Don't lead him.

Mr. GRAHAM.—Q. Do you know whether—

Mr. GRIFFITHS.—Ask him what he means.

Mr. GRAHAM.—Q. What do you mean by the voyage contracted for?

A. The voyage contracted, the voyage advertised. As I [248] say, we are operating vessels from a usual range of ports to a usual range of ports; we have scheduled the vessel's discharging ports in rotation to suit the cargo's requirements with usual, fair operating judgment. It would be poor operation to run a ship around Africa to get to the Philippine Islands, or something like that.

Q. So what you mean by your contract voyage is what you have just said, your advertised voyage? A. Yes.

Q. Are you familiar with the use of the word "via" in bills of lading; when is that used, if it is used at all? What would that indicate to your mind?

A. We might use it in connection with a transshipping point.

Mr. GRIFFITHS.—Q. Do you mean, Mr. Chandler, that the advertised voyage is the contracted voyage, and that the advertisement constitutes the contract? A. No, sir.

Q. Then I misunderstood you. What is the contracted voyage?

A. The contracted voyage—will you tell me what you mean by that, the contracted voyage?

(Testimony of C. H. Chandler.)

Q. Let me approach it this way: You stated you determined the ports to which you were going to send your ships by your cargo offerings.

A. Yes.

Q. That is the way you line the thing up; now, having so determined it, you consider that you are under obligations to your shippers to go to the ports so determined?

A. Under a moral obligation.

Q. Under no legal obligation? A. No.

Q. Are you under any legal obligation as between you and your shipper as to where you are going to go before you ultimately reach the port where the cargo is going to be discharged?

A. It is my opinion we are not. [249]

Q. Under no legal obligation whatever?

A. No.

Q. So that it comes to this, then, does it not, that as far as any contract, agreement or obligation with your shipper is concerned, you can get that ship to the port of discharge of the cargo by any route whatsoever over the face of the globe that you desire, though as a practical proposition, for your own convenience, you would not go out of the way too far? A. No.

Q. But as far as your legal rights are concerned, you can just simply do anything you please, so long as you get there?

A. Yes. In the competitive trade, though, we would feel a moral obligation in the event a deviation caused the shipper additional insurance, we would feel that we should pay the differential.

(Testimony of C. H. Chandler.)

Q. You recognize, then, that when you go out of the line that you have determined to send your ship upon, and agreed with your shipper to send your ship upon, that there is a deviation; you recognize the deviation, don't you?

A. I don't exactly get you.

Q. You used the word "deviation," and I am wondering what "deviation" is; if you can go around the world anywhere you please with a ship, unless you mean deviation in a purely moral sense; is that what you mean?

A. Could I illustrate?

Q. I would rather have you answer my question, and then illustrate it, if you don't mind. I simply want to get your position here, Mr. Chandler. It may be that you and I won't exactly agree upon the thing, but I would like to know what your position is.

A. I can illustrate it better than I could answer it in any other way.

The COURT.—Well, supposing you do that.

A. (Continuing.) For instance, we will take a case which we had. We had a ship advertised for Boston, St. Johns, New Brunswick, Baltimore. If we had followed that itinerary in accordance with [250] the advertisement, we would have considered it no deviation—

Mr. GRIFFITHS.—Q. First you had to go to Boston, then St. Johns, and then Baltimore?

A. Yes. After we had our Boston cargo on board, we decided we would go to St. Johns first,

(Testimony of C. H. Chandler.)

then Boston, and then Baltimore. We considered that a deviation, so did the Underwriters.

Q. Supposing, having advertised this run, Boston, St. Johns, and then back to Baltimore, you had run out to the Bermudas and in for some purpose, would that have been a deviation?

A. It would depend on the necessity for us going to the Bermudas. I would say it would be a deviation if we decided to take on cargo for the Bermudas after we had advertised our itinerary, I would say it would be very much of a deviation.

Q. Supposing you had originally advertised and told the shippers you were going to take some cargo to Boston, and then afterwards you ran your ship to St. Johns and Baltimore, would that be a deviation? A. Yes.

Q. So that once you tell a shipper you are going to a certain port and he has given you cargo for that port—

A. And he has taken out insurance accordingly.

Q. (Continuing.) —and if after that you would put any other ports on your list, you would deviate, and you would so consider it, wouldn't you?

A. In the event that the shipper was penalized on account of insurance.

Q. Is it your idea it depends on whether he suffers any penalty, or not?

A. As far as our attention would be called to it.

Q. These deviations that you are referring to now, are those, in your judgment, legal or moral deviations?

A. The opinions that have been handed down to

(Testimony of C. H. Chandler.)

us by Underwriters would indicate to us that they were very likely legal. [251]

Q. You know from some opinions you have received, probably, that it is rather a serious thing to deviate, do you not?

A. We are inviting trouble.

Q. You are inviting trouble because you know that while perhaps as a ship owner you regret the law to be such as it is, you know that the deviation may be fraught with legal consequences, don't you?

A. I would not say that, because I really don't know the law, but we would feel that if we had accepted cargo to a port of call and intimated to the shipper or advertised to the shipper we would make that port of call, and then without giving him a chance to protect himself on the insurance deliberately changed our route and the vessel got in trouble we would probably be inviting a lot of trouble from the cargo's underwriter.

Q. And you are inviting trouble for your shippers if you have advertisements that are not in accord, too, aren't you?

A. Yes, from a traffic standpoint.

Q. And that, of course, explains the feeling of moral responsibility that you referred to a while ago? A. Yes, sir.

Q. You want to have those advertisements in accord; that is true, isn't it, Mr. Chandler?

A. Yes, sir.

Q. There is this further question I would like to ask you, Mr. Chandler; Mr. Ghaham handed up

(Testimony of C. H. Chandler.)

to you this bill of lading and this so-called deviation clause; you told me, and I think I quite well understood, that when you said the ship might go in any order, you meant within the voyage agreed for; you appreciated, did you not, Mr. Chandler, that this deviation clause that you were reading does not provide for any sailing out of the order beyond the voyage agreed for?

A. No, I did not appreciate that.

Q. You did not appreciate that?

A. No. [252]

Q. Do you appreciate that there are—

A. I will after the decision in this case, maybe.

Q. Do you appreciate that there are some deviation clauses which do provide for sailing in any order, whether within or beyond the voyage agreed for, whereas as others give that so-called privilege to the ship only within the agreed voyage? I am asking you whether you do appreciate those two types?

A. I don't think I do.

Q. My associate, Mr. Mannon, suggests to me that you referred in your last answer to a decision of the court; you appreciate, as a shipping man, that for information and posting as to what your rights are under this so-called clause of the bill of lading, you go to the courts, don't you? A. Yes.

Q. You cannot interpret that in your own manner?

A. I might state that in this instance we could hardly feel that the interpretation could be otherwise than we have put on it, otherwise we would not

(Testimony of C. H. Chandler.)

be in business, it would be impossible to be in business.

Q. But if the interpretation is otherwise, Mr. Chandler, you recognize that as the construction, don't you?

A. We would have to adhere to it.

Q. And I think you would stay in business, too, Mr. Chandler.

A. Well, it would be impossible, in our intercoastal trade, to stay in business.

Mr. GRAHAM.—Q. Mr. Griffiths has called your attention to this clause: "To touch at any port or ports in any rotation or order in, or out of, the customary route, and to call at any port or ports more than once." What do you consider "out of the customary route"?

Mr. GRIFFITHS.—I shall have to object to that again, your Honor, and particularly now, upon the ground that the witness has [253] stated he is unfamiliar with the different types of deviation clauses; this clause that you have just read to him is one that has been judicially construed in the cases. It has been recognized for over 100 years. If this line were to be followed, you could take a witness over every one of the clauses in a bill of lading, and no one would know where they were. Every shipping man would like a greater liberality in these matters, of course.

Mr. GRAHAM.—I have already called your Honor's attention to the fact that there is a divergence in the decisions on this very question.

The COURT.—I will sustain the objection.

(Testimony of Fred A. Hooper.)

Mr. GRAHAM.—Q. You spoke about the consideration that your underwriters gave to the question of deviation in the particular case you cited: Who were the underwriters?

Mr. GRIFFITHS.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Objection sustained.

Mr. GRIFFITHS.—That is all.

Mr. GRAHAM.—That is all.

Mr. GRAHAM.—Your Honor, I have some witnesses here; we will not be able to reach them now until two o'clock; will your Honor give an order to the witnesses to return at two o'clock?

Mr. MANNON.—We ask to have the witnesses excluded from the courtroom, your Honor. It is evident that the same line of testimony is going to be followed, and we would like to have an order that the witnesses be excluded under the rule. Also, we would like to have Mr. Hooper's testimony concluded before any other witness is called.

The COURT.—Very well. The witnesses will return at two [254] o'clock. We will be in recess until two o'clock.

(A recess was here taken until two o'clock P. M.) [255]

AFTERNOON SESSION.

TESTIMONY OF FRED A. HOOPER (RECALLED—REDIRECT EXAMINATION.)

FRED A. HOOPER, redirect examination.

Mr. GRAHAM.—Q. Mr. Hooper, to go back to the question of the advertising of these various

(Testimony of Fred A. Hooper.)

vessels, and particularly the "West Aleta," what would you do if your cargo booked for a particular port other than that advertised and decided to take on a new port, to go to that new port, what would you do?

Mr. MANNON.—If your Honor please, may it be understood that we have already objected to these questions, and in addition to the grounds already specified, that they are immaterial, irrelevant and incompetent, that they are not the proper subject of expert evidence?

The COURT.—I have said that subject to objection, I would permit testimony as to custom to be introduced. You may introduce evidence as to custom. You are asking the witness on the stand now what he would do. I do not think under any rule of evidence such testimony as that is admissible. You might ask him what would be done under the general custom prevailing here.

Mr. GRAHAM.—You have heard the Judge's remarks, Mr. Hooper. What would be done under the general custom in the situation such as I have outlined it to you?

A. Our general custom was, if we ever indicated a vessel for a new port after we had commenced to receive cargo for her original ports, our custom was that we would immediately—

The COURT.—Not what you would do, but what the custom was.

A. The custom was to immediately notify the shippers, either verbally or by circular letter, of the fact that an additional port has been added, and they

(Testimony of Fred A. Hooper.)

have an opportunity of either to cancel their bookings, or to object, and to give us an opportunity [256] and them also, to make other disposition of the cargo. That is as far as I can say as to the custom.

Mr. GRAHAM.—Q. Was it customary to advertise the route a vessel was going to take for more than, say, about a month's time ahead?

Mr. MANNON.—I don't like to object to leading questions, your Honor, but I don't think they should be asked this witness.

The COURT.—I will permit this question, but refrain from asking leading questions, Mr. Graham.

Mr. GRAHAM.—Very well, your Honor.

A. Ships sometimes were advertised only ten days before sailing; sometimes a week; sometimes they were not advertised at all. A ship would come on a berth very promptly, and we did not have an opportunity to give our information by advertising, and we would have to circularize. Sometimes ships were advertised a month in advance. At the present time we advertise our ships, and all other lines advertise their ships, as far in advance as possible; it is business to do so.

Q. Take this particular voyage of the "West Aleta," what is your opinion as to the question of proper seaworthy stowage for the entire voyage, stowed in the manner in which it was?

A. The fact that Captain Rinder, marine surveyor, gave the vessel a certificate, seems to be sufficient evidence that she was properly loaded, and in a seaworthy condition.

(Testimony of Fred A. Hooper.)

Q. Going back to the question of payment for these ads, do you know now who paid for the ads in the "Daily Commercial News" and in "The Guide"?

The COURT.—He answered that question this morning, I think. If I remember correctly, he said sometimes he did and sometimes someone else in the office, but that all of the bills went over [257] his desk.

A. They usually went over my desk for O. K., or through my department.

Mr. GRAHAM.—Q. The information I would like is whether your company paid for it, or some other company paid for it, or some other organization; where did the money come from?

A. As nearly as I can remember, Williams-Dimond did pay for the advertisements, but whether the amounts were charged against the ship as ship disbursements, or not, I cannot at this time say. Williams-Dimond passed the checks in payment. What further charge was made after that, or what bookkeeping went on after that, I cannot say at this time.

Q. That is, you don't know what account those checks were paid out of? A. No.

Q. Why do you remember the case of the "West Aleta," or the sailing of the "West Aleta," and its loading, and its subsequent events, any more particularly than the "West Cayote" or any other of these Shipping Board vessels?

Mr. MANNON.—I object to that as immaterial,

(Testimony of Fred A. Hooper.)

and calling for the conclusion of the witness, and it is not proper redirect examination.

Mr. GRAHAM.—The witness was asked this morning why he failed to remember certain events of certain other ships—

The COURT.—I will allow the question, but it seems to me the answer is almost obvious. I will permit the question to be answered.

A. In this particular case it is owing to the fact that she had a most unusual and exceptional cargo of wine, and the fact that it was shipped out of the country at the particular time and under the conditions under which it was shipped out of the country; furthermore, having quite extended photographs of the vessel [258] in my desk at all times, the "West Aleta" case has been discussed by me a great many times since the affair, and consequently that particular ship remained very keen in my memory.

Mr. GRAHAM.—Q. Will you explain to the Court what you mean by the term "60 to 70 feet to the ton"?

A. That means the relative measurement to weight per short ton. In other words, 2,000 pounds of cargo of the kind referred to this morning would average a measurement of 60 to 70 cubic feet. A ton on the Pacific Coast, in Pacific Coast shipping, as a general custom, is always considered 2,000 pounds, whereas a ton in practically any other port in the world, with the exception of our domestic ports in the intercoastal trade, is usually referred

(Testimony of Fred A. Hooper.)

to or thought of in tons of 2,240 pounds, the long ton. When you speak of measurement per ton here I always have reference to the custom on the Pacific, which has reference to 2,000 pounds to the ton.

Q. Do you know when these bills of lading with which these various shipments were concerned were signed?

A. They were signed always after complete delivery of the cargo at the dock or to the ship, which usually was not more than 10 days to 2 weeks before the sailing of the ship. That is the usual practice.

Q. What relation would that time bear to any time when you had any other writings, letters, options, or bookings?

A. I don't just understand your question.

Q. What relation would the time of the signing of the bills of lading have to the time of the writing of various other letters, or options, etc.?

A. The signing of the bill of lading is the consummation of your contract. Whatever might have transpired, either by letter or conversation, or anything previous to that time, would be immaterial after your bill of lading contract, or after the actual issuance of your bill of lading. You are [259] absolutely obligated then.

Q. The letter which Mr. Mannon showed you this morning from the California Wine Association relative to the booking of that cargo, what did you consider that as, what was that?

(Testimony of Fred A. Hooper.)

A. Confirmation of space engagement, and confirmation of rate, confirmation of our intention to lift that particular parcel of cargo on that particular vessel. It is simply a confirmation of verbal conversations.

Q. I would like to have you describe very briefly the connection between the old European-Pacific Service of Williams-Dimond and the service which you heard described this morning by Mr. Chandler, so that the Court can understand the testimony of Mr. Chandler more clearly.

Mr. MANNON.—I think I will object to that as immaterial. The testimony of Mr. Chandler will have to stand by itself, I take it.

The COURT.—I will overrule the objection.

A. The European-Pacific Line was started with Shipping Board vessels, by Williams, Dimond & Co. as managing operators for the Shipping Board. After that service had been in operation for some time, the American-Hawaiian Steamship Company, whom Williams, Dimond & Co. represented as general agents on the Pacific Coast here since 1900, commenced to have their steamers returned by the Government; in the meantime the United American Lines, through stock manipulation, gained stock control of the American-Hawaiian Steamship Co., and became operating managers for the American-Hawaiian Steamship Co. in the European trade, Williams, Dimond & Co. continuing the Pacific Coast representation. Then, as the American-Hawaiian steamers were being gradually returned

(Testimony of Fred A. Hooper.)

by the Government, we, in turn, commenced to release Shipping Board steamers, supplanting them with steamers [260] of the American-Hawaiian Steamship Co., under the managing direction of the United American Lines. That method of operation and management continued until we had—let me see, it was about last May when the United American Lines and the American-Hawaiian Steamship Co. became divorced. The United American Lines then immediately started their own organization and their own agencies by appointing Sudden & Christenson as agent in San Francisco, and Sudden & Christenson automatically—we stepped out one night at 5 o'clock and Sudden & Christenson stepped in the next morning at 9 o'clock, taking over the operation of the United American ships in the European trade from us, that is, Williams, Dimond & Co. Then Williams, Dimond & Co. immediately resumed the operation of the American-Hawaiian ships in the intercoastal trade, and the American-Hawaiian ships were withdrawn from operation in the European trade, the United American Line then resuming the trade with old Cosmos Line ships, and old German ships, and some of their own American ships. That is the connecting link between the United American Lines operations as of to-day and when they started in the European business. It was simply a continuous operation with an overnight transfer of authority.

Mr. GRAHAM.—That is all.

(Testimony of Fred A. Hooper.)

Recross-examination.

Mr. MANNON.—Q. Sometimes, as I understand your testimony this afternoon, your ships were not advertised at all as to ports of destination, occasionally they were advertised for the period of ten days, sometimes for a longer period, during the time you were operating the line in question here, the European-Pacific Line, before the "West Aleta" went out: Is that right? A. Yes, sir. [261]

Q. With regard to the time the bills of lading are usually executed, do I understand you to say that the bills of lading are the last signed, the last document signed? A. No, I didn't say that.

Q. What is the last document signed?

A. The last document signed for what operation or covering what transaction?

Q. For the shipment of cargo on the vessel that you were operating for Williams-Dimond.

A. You mean the last document that is signed between the company and the shipper, or the entire transaction in clearing a ship?

Q. I mean the last document signed as between the company and the shipper.

A. The bill of lading is supposed to be the last document signed.

Q. Now, with regard to the matter of firm bookings, firm space engagements, is it not a fact that while you were operating the European-Pacific Line and prior to the time the "West Aleta" sailed, that it was common practice for you to have a firm space engagement on your ships by certain shippers which

(Testimony of Fred A. Hooper.)

constituted, in your opinion and theirs, a contract for space? A. Yes, sir.

Q. And as you knew at that time, it was the practice then of those people who had made the firm space engagements, to sell their goods with reference to the fact that they had that space engaged to ship the goods? A. Not always; no, sir.

Q. Not always, but sometimes?

A. Sometimes, but not always.

Q. And it was common practice then, when people were intending to ship goods, for them to make a space engagement a considerable length of time ahead, so as to have the goods ready to send?

A. Not always.

Q. No, not always, but sometimes?

A. Sometimes, but not always.

Q. And it appears here, that the California Wine Association [262] had engaged its space as early as November 25, 1919, perhaps a month before it was intended to have the ship sail, did they not?

A. From the correspondence passed I would judge so; yes.

Q. That is the common practice in shipping, is it not, then and now?

A. It is common practice to make reservations in advance of the sailing of a steamer—very common.

Q. And those reservations would be firm reservations, that is, would constitute a contract for space?

A. They are not always firm. In a great majority of instances, the reservations carry an option

(Testimony of Fred A. Hooper.)

with them; in other words, a shipper may be in cable communication on a 500-ton shipment of rice, or beans, or flour, and he will make an optional reservation, in other words, he will take a reservation out the option on which is to expire in 48 hours, or in 60 hours.

Q. But at some time or other that option is exercised and becomes a firm booking?

A. Not always; it is not an infrequent case to have your options cancelled.

Q. Well, a man either cancels his option or it is understood that he exercises the option, and if he does he then has a firm booking, has he not.

A. Yes, sir.

Q. And that is the usual course of space engagement for the forwarding of goods on vessels like the "West Aleta," and other vessels of its kind?

A. It is the usual practice.

Q. And this letter of November 25, 1919, introduced in evidence here from you to the California Wine Association, was to confirm space, to make a firm contract, was it not? A. Yes.

Q. Before Sudden & Christenson took over the agency of the United American Lines, Mr. D. W. Burchard had charge of the San Francisco office of the United American Lines, did he not?

A. Mr. Burchard was what might be termed a Pacific Coast Manager, but Sudden & Christenson were the business getters and the [263] parties who did the actual business with the public. Mr. Burchard was in an official capacity.

(Testimony of Fred A. Hooper.)

Q. Through whom were the charters arranged, if you know? A. What charters?

Q. Space engagements of any character.

A. Through Sudden & Christenson, and also through Mr. Burchard.

Q. As a matter of fact, before Mr. Burchard was finally eliminated, were not the contracts for space arranged by and signed by D. W. Burchard?

A. Sometimes they were. I cannot testify definitely as to their technical detail method of operation down there.

Q. Were not Sudden & Christenson acting in Seattle at that time while Mr. Burchard was acting here for the United American Lines?

A. The United American Lines had, as I understand, their organization—this evidence that I am giving you now, and the remarks I am making to you now, are simple hearsay from me, I don't know it of my own knowledge.

Q. And that is true with regard to all of this explanation you have been giving, isn't it?

A. No, sir, it is not true so far as the United American Lines and the American-Hawaiian, and the Williams-Dimond connections are concerned.

Q. What you know is in regard to the Williams-Dimond connection and your own personal connection, isn't it?

A. And the American-Hawaiian connection with the United American, and the causes which brought about the divorce between the United American and

(Testimony of Fred A. Hooper.)

the American-Hawaiian, that is all of my own personal knowledge.

Q. But you have no knowledge of the relations between Mr. D. W. Burchard and Sudden & Christenson with the United American Lines?

A. Only what everybody else knows as a matter of public information.

Q. And that is the reason you are testifying to it, isn't it, [264] Mr. Hooper, because it is a matter of public information? You don't know anything about it, yourself, do you?

A. As regards their technical business organization, and details, I have no personal knowledge of that, and I do not believe I attempted to say anything in connection with that.

Mr. MANNON.—That is all.

TESTIMONY OF JAMES J. RUDDEN, FOR RESPONDENT.

JAMES J. RUDDEN, called for respondent, sworn.

Mr. GRAHAM.—Q. What is your business?

A. Marine surveyor.

Q. With whom are you now associated?

A. Myself.

Q. With whom were you associated in 1919 and 1920? A. With Captain J. H. Rinder, deceased.

Q. Did you have any connection with the steamship "West Aleta"?

A. I was aboard of her when she was loaded here in San Francisco and also at Point San Pablo.

(Testimony of James J. Rudden.)

Q. Did you have any connection with loading her?

A. When Captain Rinder was not there I went up and represented him to see that she was stowed properly.

Mr. MANNON.—Counsel produces a surveyor's certificate, and says it is Captain Rinder's certificate. We will accept his statement for it. It may go in evidence, but we think that it is immaterial.

Mr. GRAHAM.—We introduce survey certificate dated January 6, 1920, of the steamship "West Aleta," with the following cargo destined for Hamburg, Rotterdam and Cardiff, via the Panama Canal; it is signed by John H. Rinder, surveyor. We ask that it be marked Respondent's Exhibit "E."

The COURT.—You say there is no objection to it?

Mr. MANNON.—We think it is immaterial. Counsel has identified it, and that is satisfactory to us. [265]

Mr. GRAHAM.—Q. This is the surveyor's certificate, is it? A. Yes, that is it.

Q. What connection did you have with Captain Rinder in the survey of that vessel?

A. I was assistant to him.

Q. Did you work along with him?

A. I worked with him, and also without him.

Mr. GRAHAM.—I introduce in evidence the stowage plan of the steamship "West Aleta," sailing January 6, 1920, and ask that it be marked Respondent's Exhibit "F."

(Testimony of James J. Rudden.)

Q. I show you a stowage plan of the vessel and ask you if that is, in fact, the stowage plan?

A. That is the stowage plan.

Q. I wish you would take a good look at that and note the stowage of the wine on that vessel. In your opinion as an assistant surveyor of that vessel, would it have been proper stowage to have stowed as much cargo of wine as is stowed as indicated there, in any other place? A. No, sir.

Q. Would it have been possible to have unloaded the Cardiff wine first, as it is stowed in that vessel?

A. It could by extra expense and shifting of cargo.

Q. What would they have had to have done to have unloaded Cardiff first?

A. You would have to take out the square of the hatch and the 'tween decks.

Q. What is in the square of the hatches and the 'tween decks?

A. Barrels of brandy, lumber, rice.

Q. Cargo destined for what port?

A. Cargo destined for Hamburg. Hamburg No. 1. Rotterdam and Hamburg in No. 2. Also Hamburg in No. 3. And Hamburg in No. 4.

Q. You will note here a stowage of cargo which is noted as Rotterdam bean oil; tell the Court where that is stowed?

A. That is stowed in No. 3 hatch, in the 'tween-decks. [266]

Q. Give the Court your opinion as to the propriety or impropriety of that stowage?

(Testimony of James J. Rudden.)

A. The stowage is all right, only to guard against heat there in that hatch.

Q. But as to the possibility of leakage on any other cargo.

A. There is none, whatsoever, there.

Q. Now, the same thing as to the Rotterdam brandy, where is that stowed?

A. We will call that No. 4—Yes, in the forward end of No. 4 'tween-decks.

Q. Stowed over what cargo?

A. Stowed over lumber.

Q. What about that as to being good stowage or bad stowage?

A. The holds were inspected before that was loaded in there, and the scuppers were found clear, and if there was any leakage it would run from the scuppers to the bilges.

Q. Could the scuppers have taken care of all the leaks there, if there had been any? A. Yes.

Q. How about this cargo here, Cardiff wine; would the same answer apply to that?

A. As long as there was sufficient dunnage underneath it would not hurt the cargo.

Q. Now, taking you back to the after end of the ship, in your opinion what was the purpose of stowing rice for Hamburg and Rotterdam where it is shown to have been stowed?

A. I presume it is the way the ship was going to go in ports by order.

Mr. MANNON.—I move to strike that out; the witness says he presumes.

(Testimony of James J. Rudden.)

Mr. GRAHAM.—Q. Do you know why it was stowed there?

A. It was stowed there so that it would be first out.

Q. If the Cardiff wine had been loaded in the inverse order, that is, on top, to have allowed discharge first, what would have been the effect on the issuance of a surveyor's certificate?

A. That would be murder, to put wine on top of general merchandise [267] —rice and other stuff that was in the ship.

Q. Would you or would you not have issued a surveyor's certificate? A. No, sir.

Mr. GRAHAM.—That is all.

Cross-examination.

Mr. MANNON.—Q. The Hamburg rice was stowed in the most available place, so that the Hamburg rice could be taken out first, as I understand your testimony: Is that right?

A. By shifting cargo, yes.

Q. I mean the Hamburg rice.

A. It depends on what hatch it is in. In No. 5 you have rice in the after end. That is the fact, isn't it?

Q. The way the ship was stowed, it was arranged, was it not, so the Hamburg rice would be taken off first?

A. If that was her first port of call to go to, yes.

Q. You know the way she was stowed, don't you?

A. I do, yes.

(Testimony of James J. Rudden.)

Q. So it was arranged, was it not, so that that rice could be taken off first? A. Yes.

Q. You are sure of that, aren't you? A. Yes.

Q. And the same thing is true of the Rotterdam rice, the Rotterdam rice was placed so it could be taken off before the Hamburg rice?

A. May I have the stowage plan in front of me while you are asking me these questions?

Q. Certainly. Now, will you answer my question? A. It could not, without shifting cargo.

Q. What I am getting at is this: If you put the Rotterdam rice in the most convenient place, you could have taken that off first, could you not, at Rotterdam?

A. If it was stowed here to be taken out first, yes.

Q. You could have stowed it in that way had you been so directed, [268] or so minded?

A. Yes, if I told the stevedores. That was up to the office, though, I have nothing to do with that.

Q. You have nothing to do with that? A. No.

Q. But it could have been done. It is all rice. Calling it Hamburg rice or calling it Rotterdam rice has nothing to do with making it easier or harder to stow.

A. It is all rice, but you have your destination separate, and the same time look out for the stowage and seeing it is not damaged by the other cargo.

Q. A surveyor who was interested in getting off certain rice at Rotterdam and in getting off certain rice at Hamburg, could have stowed it to get it off that way, couldn't he?

(Testimony of James J. Rudden.)

A. The surveyor has nothing to do with that, at all.

Q. I thought you had directions—

A. All we supervise is to see that the ship is properly loaded and seaworthy.

Q. Who does determine those things on the ship?

A. The office; the first officer of the vessel.

Q. The officers of the ship could have stowed the ship so that the Rotterdam rice could come off first?

A. The office people and the ship's officers—by the ship's officers I mean the captain.

Q. They could have done that without any difficulty at all, couldn't they? A. I presume so.

Q. You are sure of it, aren't you?

A. Not if you have a full ship. It all depends on how much cargo you have in the ship for the different places.

Q. I don't know much about this, and you know a great deal about it. If you have two sacks of rice and one is going to Rotterdam and one to Hamburg, and they are just exactly alike, if you are going to Hamburg first you put the Hamburg sack of [269] rice so that you will take it off at Hamburg, don't you? A. Yes.

Q. And you put the Rotterdam sack of rice in such a place or in such a position so that you can take that sack off at Rotterdam? A. Yes.

Q. So there is no trouble in regard to loading that rice, either as to Hamburg or as to Rotterdam, is there, had it been stowed with that end in view

(Testimony of James J. Rudden.)

originally? You haven't any question about that, have you?

A. It all depends on how much cargo comes down, whether you have it all rice, or all wine, or all dried fruits. The chances are the stuff may not come down until the last minute, and then you have to leave space in the 'tween-decks, you have to keep weight in the lower hold for the stability of the vessel.

Q. So you cannot always load a vessel in regard to the ports of call, can you, but you have to load it in the way the cargo comes down?

A. Absolutely.

Q. And this one was loaded that way?

A. I don't know about that. This one was loaded in regard to the ports of call.

Q. Then the explanation you gave has nothing to do with this matter, has it?

A. You have to leave space for it; sometimes you have to knock off your gangs of stevedores and you have to wait for it.

Q. But if you have two sacks of rice, one for Rotterdam and one for Hamburg, you would put the one on top which is going to be taken off first, wouldn't you? A. Yes.

Q. You are perfectly clear on that, aren't you?

A. Yes.

Q. Would you be competent, for instance, with that ship stowed as she was and laden as she was, if you were at Cardiff, to take the Cardiff wine off first?

(Testimony of James J. Rudden.)

A. You say to take the Cardiff [270] wine off first?

Q. Yes. A. Yes, sir.

Q. And if you were at Cardiff, would you know how the rest of the cargo ought to be stowed so that the boat would go on to Rotterdam all right?

A. Yes, sir.

Q. And if you were at Rotterdam, would you know enough to take the Rotterdam cargo off and then put on enough ballast or whatever was necessary for her to go to Hamburg all right?

A. Yes, sir, at the expense of getting ballast.

Q. It might be expensive, but you could do it, couldn't you? A. Yes, it could be done.

Q. And you are positive of that, aren't you?

A. Yes.

TESTIMONY OF E. F. R. DE LANOY, FOR RESPONDENT.

E. F. R. DE LANOY, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you connected, Mr. De Lanoy?

A. The Holland-American Line.

Q. What is your position with the Holland-American Line? A. Pacific Coast Agent.

Q. How long have you been in San Francisco with the Holland-American Line?

A. A little over four years.

Q. You came here when? A. In August, 1920.

Q. Was that the date on which the Holland-

(Testimony of E. F. R. De Lanoy.)

American Line began its service from the Pacific Coast here? A. Yes, sir.

Q. In what service do you operate your vessels?

A. We have a joint service with the Royal Mail Steam Packet Co. from this coast to European ports.

Q. Just in general, what ports do you call at in Europe?

A. Our ports of call are Liverpool, London, Glasgow, Southhampton, Hamburg, Rotterdam and Antwerp.

Q. So you go up as far as Hamburg, and take in the British ports? [271] A. Yes.

Q. Do you ever take in Cardiff?

A. No, we never did.

Q. I show you here a copy of "The Guide," which has been introduced in evidence in this case, dated the 29th of this month, and ask you if you advertise in "The Guide"? A. Yes, we do.

Mr. MANNON.—If your Honor please, I will object to the testimony of this witness, in addition to the other objections and exceptions already reserved, on the ground that it now appears that this witness came here in August of 1920, some six or seven months after the "West Aleta" had stranded. It does not occur to me that this witness can testify about a custom, because he was not here to know about the customs. It does not occur to me he can testify how shipping was done out of this port, when it does not appear that he knows how shipping was done at that time.

(Testimony of E. F. R. De Lanoy.)

The COURT.—You offer this testimony for the same reason you offered like testimony this morning?

Mr. GRAHAM.—Yes, your Honor, to show the continuousness of this service, with no objection on the part of shippers.

The COURT.—It will be received under the same objection.

Mr. GRAHAM.—Q. If you will read the names of those ships in order, and the ports of call which they made, I think that will be sufficient.

A. The steamer "Nebraska," Glasgow, Liverpool, Southampton, London.

The motorship "Drechtdyk"—

The COURT.—Couldn't you ask him one general question and shorten this up?

Mr. GRAHAM.—Yes, I can, your Honor.

Q. From this advertisement which I show you, can you answer generally whether or not your vessels called at the ports of [272] call in Europe and in the United Kingdom in or out of their geographical order?

A. Some called out of their geographical order and some in geographical order.

Q. In other words, you just call indiscriminately?

A. That is right.

Q. Did you have a vessel sailing out of here within recent days called the "Moerdy"? A. Yes—

Mr. MANNON.—Just a moment. I object to that, your Honor, as immaterial, irrelevant and incompetent. It appears that this is something that

(Testimony of E. F. R. De Lanoy.)

only occurred a few days or a few months ago, in other words, just recently.

The COURT.—I will sustain the objection.

Mr. GRAHAM.—Q. On the "Drechtdyk," you have advertised London, Hamburg, Rotterdam and Antwerp: Is that in or out of geographical order?

A. That is very hard to say.

Q. She will make those ports in that route, will she? A. Yes.

The COURT.—Some of these matters have already been covered.

Mr. GRAHAM.—Yes, your Honor. I want to show that he does like everybody else does.

Q. What is your opinion as to the custom of the trade to operate in this service and to go beyond a port, as your advertisement indicates, and bring cargo back to that port?

Mr. MANNON.—We object to that question on the ground that it calls for the opinion of this witness. If this witness is to testify to custom, and there is some custom, we submit he should be asked on direct examination what the custom is, and if he says there is a custom, then he should state it.

The COURT.—Yes, I will sustain the objection. The objection, though, really goes to the form of the question.

Mr. GRAHAM.—Q. What can you tell the Court as to the custom [273] of your service to operate those vessels in that order, with cargo for all of those ports?

(Testimony of E. F. R. De Lanoy.)

A. It is our custom to go to the ports as a matter of operation.

Q. How do you inform the shippers of the order of the ports?

A. We advertise in different newspapers and issue a sailing card showing the ports of call of each vessel.

Q. How much weight do you give to the advertisements in "The Guide," as to their sufficiency?

Mr. MANNON.—That is objected to as immaterial.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. I show you a bill of lading which was used in this particular case, and will read to you the deviation clause: "To touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, unto the port of Rotterdam." Under such a phrase, can you tell the Court anything about the custom to operate in such an order, say, as Hamburg, Rotterdam and Cardiff?

A. The vessel has a right, under that clause, to proceed to some other port before going to Rotterdam or any port.

Q. What do you understand as to range of ports? Do you understand the term "range of ports"?

A. Yes.

Q. What does that mean?

Mr. MANNON.—We object to that because that term is not used anywhere except in the testimony

(Testimony of E. F. R. De Lanoy.)

of certain witnesses, and they, themselves, explained what that meant.

The COURT.—Objection overruled.

A. Range of ports is usually stipulated in charter parties, and is not applied to a regular trade, like we are engaged in from this coast to Europe.

Mr. GRAHAM.—That is all. [274]

Cross-examination.

Mr. MANNON.—Q. Under that clause that you referred to in that bill of lading, the liberty-to-call clause, where could that ship have gone, in your opinion?

A. It could go to the ports advertised before departure from this coast.

Q. Would it be limited to any advertised ports?

A. No, that ship would have a right to call somewhere else.

Q. Would it make any difference whether there were different advertisements in different newspapers, in your opinion?

A. Well, such a case may come up after the ship has been advertised for loading on this coast; there may be space available which can be filled at some subsequent port which is not advertised.

Q. So the ship could go to advertised ports and to some ports that were not advertised?

A. Yes, under certain conditions.

Q. How could you tell what ports besides those that were advertised she could go to under that clause?

(Testimony of E. F. R. De Lanoy.)

A. It all depends on the ports within reason on the way to the first port of call in Europe.

Q. For instance, could she have gone to Danzig?

A. No; pardon me—I hardly think so.

Q. What makes you think she could not go to Danzig?

A. Well, she may go to Danzig, after first calling at the ports advertised.

Q. Why couldn't she go to Danzig before she called at any of the ports advertised?

A. Because, like we do here, we advertise the ports of call and they are taken in rotation as advertised, so if we should go to another port that would make the last one.

Q. So it would be necessary for the ship to go to the ports in the order that they are advertised?

A. Oh, yes. [275]

Q. What would you do if you had two advertisements that were different? For instance, if you had one advertisement that read "Cardiff, Rotterdam and Hamburg," and another one that read, "Hamburg, Rotterdam and Cardiff," where would you expect her to go?

A. One of the advertisements would be wrong.

Q. And you couldn't tell where she was going, could you? A. If that was true, no.

Q. The only way you could tell where the ship was going, really, would be by the advertisements of the ship? A. Yes.

Q. Suppose the ship did not advertise at all where she was going, how would you tell?

(Testimony of E. F. R. De Lanoy.)

A. I would advise the shipper as to the ports of call in that particular case.

Q. You would advise them?

A. Advise them by letter or by telephone.

Q. That is the only way you could tell?

A. Yes, sir.

Q. Do you use a bill of lading in your business?

A. Yes, sir.

Q. Does it have a deviation clause in it?

A. Yes, sir.

Q. How does it read?

A. I could not tell you that by heart.

Q. Does it say you can go to a given port, and beyond that port, or not?

A. If I remember distinctly, it mentions that we can go to port or ports in any rotation, and beyond any ports mentioned.

Q. So that your bill of lading, in terms, says that you can go beyond any ports that are mentioned, doesn't it? A. Yes, sir.

Q. What is the reason for having that in your bill of lading, that you can go beyond any of the ports mentioned?

A. I don't know of any special reason.

Q. You use that bill of lading, yourself, do you not? A. Yes, sir.

Q. And you don't know why you use it?

A. That bill of lading was made in Europe, it was not made by me here in San Francisco. [276]

Q. And that is the bill of lading under which all of the goods are shipped that you refer to here?

(Testimony of E. F. R. De Lanoy.)

A. Yes, sir.

Q. The bill of lading that says your ships can go beyond the port of destination mentioned in the bill of lading? A. Yes, sir.

Q. And you would think ordinarily that your ships could go to any port you wanted to advertise them for, would you not, so far as your shippers of cargo are concerned?

A. We could go under the bill of lading, yes.

Q. You would have that perfect right?

A. Yes.

Q. And it would not make any difference whether they were European ports, or African ports—to take a very extreme case?

A. Well, within reason, I would say.

Q. How do you determine what is or is not within reason, if there is not any advertisement about it?

A. For instance, I would not send a ship that was advertised for certain ports in Northern Europe to the Mediterranean.

Q. But if it is not advertised at all, could you then send it to the Mediterranean?

A. Yes, according to the bill of lading, but it would be poor business, and for that reason we don't do it.

Q. But so far as your right is concerned, if you wanted to, you could advertise the ship and send her anywhere in the world?

A. We could not advertise the ship, no, because

(Testimony of E. F. R. De Lanoy.)

we have a regular service from this coast to Europe, and not around the world.

Q. What I wanted to find out from you was this: Suppose you were using a bill of lading like you used, you had some cargo that was destined for, say Hamburg, and you didn't have any advertisement at all of where your ship was going, could you take that cargo to other ports first, under your bill of lading? A. Yes, we can.

Q. Could you take, for instance, it to Danzig and back? [277]

A. Under certain conditions, yes.

Q. Or, if you wanted to, to take a most extreme case, under your bill of lading if there was not any advertisement involved, you could take it around the world the other way?

A. No, I don't think so.

Q. Why not?

A. Well, for instance, we would take cargo to a port advertised, in case we are prevented from discharging by strike or *force majeure,* or by some government regulation, then we would carry it to the next port closest to the original port of call.

Q. Does that bill of lading have something about strike and *force majeure?* A. Yes.

Q. Those things are all covered by your bill of lading, are they? A. Yes, sir.

Q. Under your bill of lading you could not take goods that were loaded, say, for Cardiff, you couldn't take them to Cardiff by going around the Cape of Good Hope, out of San Francisco, could

(Testimony of E. F. R. De Lanoy.)

you? You would have to take them through the Canal, do you think?

A. Well, I don't know all the clauses of the bill of lading by heart. I don't think we would accept such cargo under those conditions.

Q. But if you had accepted it, though, and you didn't have any advertisement at all about it, could you take it anywhere you wanted to, under your bill of lading, where you have the right to take it beyond the port of destination?

A. We may have the right, but we would discharge it at the next port closest to Cardiff.

Q. But you testified here to what somebody had the right to do under a bill of lading; under your bill of lading could you have taken those goods around the world if you wanted to, without any advertisement?

A. In case of strike or *force majeure* [278] and under certain conditions, I think we would.

Q. But, leaving out entirely those matters provided for by your bill of lading, suppose you wanted to take it to a great many other ports first, could you do it, without any advertisement at all?

A. I could not say yes or no.

Q. As a matter of fact, you don't think you have got a right to do that, do you?

A. You see, our bill of lading is made up for a special trade between this coast and Europe; there never enters the question of around-the-world service, or any service far away from the ports of call which we advertise.

(Testimony of E. F. R. De Lanoy.)

Q. But your bill of lading is made with reference to the service that you are in? A. Yes, sir.

Q. It is made with reference to the way you run your business?

A. Only for that particular service.

Q. And your bill of lading provides that you have the right to take the goods beyond the port of destination? A. Yes, sir.

Q. Is not that the reason why the words "beyond the port of destination" are used in the bill of lading, because you run your ships that way?

A. I do not know for what special reason it was put in. As I said, I did not make up that bill of lading. It has been made up in London, or in Rotterdam, where the head office is. They may have had more experience in cases of that kind.

Q. You didn't have anything to do with making up the bill of lading?

A. No, that was done in Europe.

Q. Where were you before July or August, 1920, where were you stationed?

A. I was in New York.

Q. How long had you been there?

A. About half a year.

Q. What were you doing there?

A. I was working in the freight department of the Holland-American lines.

Q. Do their ships touch at New York?

A. Yes, sir.

Q. And run from New York over to Europe?

A. Yes, sir. [279]

(Testimony of E. F. R. De Lanoy.)

A. And use the same kind of a bill of lading?

A. No, a different one.

Q. A different kind of a bill of lading?

A. Yes.

Q. Where do those ships go from New York to Antwerp, or where did they go at the time you were there?

A. They went from New York to Rotterdam only.

Q. From New York to Rotterdam direct?

A. Yes.

Q. And didn't make any other ports at all?

A. Except the passenger boats, landing passengers in England or France, but on those no freight was carried.

Q. No freight was carried on the passenger boats?

A. No.

Q. Prior to the time you were in New York, where were you located? A. I was in Chicago.

Q. Had you been there some time?

A. Yes, I was there seven or eight years.

Q. So you were not in San Francisco at all during 1919? A. No, sir.

Q. Nor in January of 1920? A. No, sir.

Q. If your bill of lading reads "to port of destination or beyond," that means, as you understand it, that you have the right to carry the goods beyond the port of destination on the ordinary route?

A. I don't know about the port of destination there; it says "port or ports, or beyond the ports."

(Testimony of E. F. R. De Lanoy.)

Q. "To port or ports, or beyond the ports"?

A. Yes; I don't know whether that word "destination" is in there. I don't recollect that at the present time.

Q. But that means that you can go to the port named, and then you can go beyond the port named in the bill of lading, doesn't it? A. Yes, sir.

Q. So that if you leave the words "beyond the port of destination" out of that bill of lading, then you have no right to take [280] it beyond the port that is named, have you?

A. I think the previous clause, that you can call at any ports, would be sufficient.

Q. That would mean that you could call at any port up to the port of destination, wouldn't it?

A. Or other ports, as long as it was advertised, I would say.

Q. So it does not make any difference, in your opinion, with regard to your bill of lading, whether it reads you can carry them to the port of destination, or you can carry your goods beyond the port of destination: Is that right?

A. No, I don't think so.

Q. You think it doesn't make any difference?

A. I think we have the right under both to call at all ports.

Q. For the reason that you have a bill of lading that covers beyond the port of destination?

A. Yes, sir.

Q. About the issuance of a bill of lading, will

(Testimony of E. F. R. De Lanoy.)

you describe to the Court just how a bill of lading is issued?

A. When cargo is delivered to the dock, a dock receipt is usually made out, and that dock receipt is presented to the office, and bills of lading are made out according to the marks and the numbers on the dock receipts.

Q. Then what do you do with the bill of lading?

A. That is signed and stamped with the different stamps, the original, and the copy, and then handed to the shipper against payment of freight.

Q. What does the shipper do with it, how does he use it in his business, do you know?

A. I have only a vague idea, because that is not within my line.

Q. You have never done that, yourself?

A. No, I am not a merchant.

Q. In regard to the various clauses in the bill of lading, did you ever look at a bill of lading to see what you have a right to [281] do at all in shipping?

A. Yes, I have read them once, or twice, maybe.

Q. In fact, when the question arises as to what you can do with your cargo, you look at your bill of lading, don't you? A. Yes, sir.

Q. And that is what the bill of lading is for, ordinarily?

A. Yes, the conditions under which the cargo is accepted.

Q. The bill of lading shows the contract between the parties, doesn't it?

(Testimony of E. F. R. De Lanoy.)

A. Yes; we agree to transfer freight for a certain party under certain conditions.

Q. That is what the bill of lading is for, isn't it?

A. Yes, sir.

Q. Do you know anything about cargo claims, claims made on account of damaged cargo, or non-delivery of cargo, or anything of that sort?

A. Yes, sir.

Q. You are familiar with that kind of claims?

A. Yes. I am only familiar with cargo from Europe to this coast.

Q. When you have claims on account of damaged cargo, or lost cargo, do you look at the bill of lading to see about what your rights are?

Mr. GRAHAM.—I object to that as not proper cross-examination. This witness did not testify to anything on his direct examination about claims or about damaged cargo.

The COURT.—I will overrule the objection.

A. Yes, I do.

Mr. MANNON.—Q. And then you determine what you can do by what the bill of lading says?

A. Yes, sir.

Redirect Examination.

Mr. GRAHAM.—Q. Do I understand you to have said in answer to Mr. Mannon's question that as far as you are concerned your idea is that under a clause such as I have quoted to you, "with [282] liberty to touch at any port, in any rotation or order, in or out of the customary route," that that

(Testimony of E. F. R. De Lanoy.)

gives you the same privilege as a bill of lading which has the words in it, "or beyond"?

A. Yes, I would say so.

Q. What papers did you advertise in, or do you advertise in now?

A. We advertise in "The Guide," and the "Daily Commercial News," I believe, and some weekly and monthly magazines.

Q. As to "The Guide" and the "Daily Commercial News," just briefly state your idea of what those two papers are used for. What is the purpose for which you advertise in "The Guide," and in the "Daily Commercial News," or one or the other?

A. The purpose is to acquaint the shippers with sailings our line offers to Europe.

Q. Am I correct in understanding that you testified that a ship customarily follows the advertised route, so far as you know?

A. Yes, we do that.

Mr. GRAHAM.—That is all.

Mr. MANNON.—No further questions.

TESTIMONY OF FRED L. DOELKER, FOR RESPONDENT.

FRED L. DOELKER, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Doelker? A. W. R. Grace & Co.

Q. With whom were you associated in 1919 or 1920?

(Testimony of Fred L. Doelker.)

A. W. R. Grace & Co., General Agents for the Johnson Line.

Q. Are Grace & Co. still the General Agents for the Johnson Line? A. Yes, sir.

Q. What was your position with them and what is your position now? A. Traffic Manager.

Q. How long have you been engaged in the shipping business? A. Since 1909. [283]

Q. How long have you been in the traffic department? A. Since 1917.

Q. How long have you been handling the Johnson Line? A. Since 1917.

Q. What service do they engage in?

A. European service, Scandinavian.

Q. In general, just name the ports in which they ordinarily call—not necessarily in order.

A. Christiania, Gothenberg, Malmo, Copenhagen, Stockholm, Hamburg, occasionally U. K. and Irish ports.

Q. So you are familiar with this so-called European-Pacific service? A. Yes, sir.

Q. I show you a copy of an advertisement under the caption "The Johnson Line," indicating sailings from the Pacific Coast for Scandinavian ports: Do you recognize either of those two ships, the "Suecia" and the "San Francisco"?

A. Yes, sir.

Q. Those two ships were engaged in this trade at that time, the European-Pacific trade?

A. Yes, sir.

(Testimony of Fred L. Doelker.)

Q. And they called at the ports you have indicated or at some of them?

A. Some of the ports.

Mr. MANNON.—Mr. Graham, what is that you are reading from?

Mr. GRAHAM.—"The Guide." It is the ad of the Johnson Line in "The Guide" of June 5, 1920.

Q. Will you just briefly state to the Court the practice or the custom of your line at that time in the operation of vessels in the European-Pacific Service, with relation to the ports of call, in or out of their order.

A. I don't recall what ports these two boats went to, but our regular trade is the Scandinavian trade. We call at ports in England, Ireland, France, or Germany, as we require cargo for filling up. We have a boat now that is going direct to Hamburg on account of our fruit business, and from there she is going over to England, and then on to [284] Scandinavia. It just depends on the cargo offerings which way our boats go.

Q. Can you say that you do or do not route your vessels, either now, or back in 1920, in or out of geographical order? A. Both ways.

Q. In other words, you don't pay much attention to the order?

A. It depends on conditions. Our ultimate destination is Scandinavian ports; the other ports in the United Kingdom or the Continent we make as we require cargo for filling up.

Q. In your position with Grace & Co., are you

(Testimony of Fred L. Doelker.)

familiar with what other lines did in 1919 and 1920 in this service? A. Just what do you mean?

Q. As to the operation of their vessels, as to ports of call, what was their custom, did they go in certain order, or did they have any order, or just what was it?

A. I cannot say that they had any particular order; it would depend on the conditions, cargo offerings.

Q. So you cannot say whether they did have any order, or no order? A. I cannot, no, sir.

Q. Did you have a vessel sailing out of there, say last month? What was your last vessel out for those ports?

A. The last vessel was the motorship "Canada" on November 26th.

Q. Where was she scheduled to go?

A. She went via the Canal to Hamburg, and probably a U. K. port, and then on to Scandinavia.

Q. How was that with reference to geographical order, was it in or out of geographical order?

A. That would be out of geographical order if she went to a U. K. port after she left Hamburg.

Q. Is that what she was going to do?

A. She was going direct to Hamburg, and she had a grain cargo, and we don't know where that was to be discharged, it may be ordered to Liverpool, or it may be ordered to Leith, or she may go on to Scandinavia; the [285] shipper has the option of a U. K. port.

Q. I show you here a United States Shipping

(Testimony of Fred L. Doelker.)

Board bill of lading, which is in evidence in this case, and ask you if you have ever had any experience in the use of these bills of lading? That is the ordinary Pacific form.

A. No, sir, not that particular bill of lading. We have our own bill of lading for the Johnson Line service.

The COURT.—You want to know whether he has had any experience with a bill of lading containing—

Mr. GRAHAM.—I wanted to know, first, your Honor, if he knew this bill of lading, if he was familiar with it.

Q. I will read you the deviation clause in this particular bill of lading, and ask you whether you have ever had any experience with similar clauses in your own bill of lading: "To touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports more than once"; have you had any experience with a clause similar to that?

A. Our clause is similar to that in our Johnson Line bill of lading.

Q. And you have testified it is your custom to go out of the geographical order under that clause?

A. Under that clause, yes, in the European trade.

Q. What notice do you usually give to shippers of your intention to go in one or in another direction, or the ports of call?

A. We give them written notice if we know here

(Testimony of Fred L. Doelker.)

at the time where the boat is going; if we don't know, we simply say she may call at European ports, and we don't name them.

Q. You don't name them?

A. Not the European ports. The Scandinavian ports we name, because that is our ultimate destintion.

Q. Do you consider, as a steamship operator, that this clause [286] permits you to run your service as you do run it, and that it is customary?

A. Yes, sir.

Q. Do you advertise in "The Guide" now?

A. Yes, sir.

Q. What is your ad for, what is your purpose in putting the ports of call in "The Guide"?

A. To keep the shippers informed as to what our ports are.

Q. That is the manner in which you inform them, is it?

A. So they will know our sailings, yes.

Q. From "The Guide"?

A. From "The Guide."

Q. And you were familiar with the custom in 1919 and 1920 in this European-Pacific service, were you? A. Yes, sir.

Q. Could you or could you not say it was customary to operate ships from the Pacific Coast in that trade in a route, say, Hamburg, Rotterdam and Cardiff?

A. Well, as far as the Johnson Line is concerned,

(Testimony of Fred L. Doelker.)

yes, we would consider we could do that under our contracts and bills of lading.

Q. And your contract, you have testified, was the same as this? A. More or less.

Q. You don't know the exact wording of it?

A. I have a copy of our bill of lading.

Q. You have it with you? A. Yes.

Q. May I see it, please?

A. Yes; this was in October, 1921.

The COURT.—I suppose this evidence is all clearly admissible on the theory of a practical interpretation or construction of that particular provision of the bill of lading?

Mr. GRAHAM.—Yes, your Honor.

Mr. MANNON.—But subject, from our point of view, your Honor, to the objections we have already reserved, and we will argue those later, if we may.

The COURT.—Yes. Are the provisions similar? I see you [287] have been comparing them.

Mr. MANNON.—Somewhat similar, but each bill of lading, we shall contend, is different; we shall expect to point out in each one of them where the difference is.

Mr. GRAHAM.—Q. I will read to you the clause which I find in your bill of lading which you have just handed to me, and which is used by yourselves in the Johnson Line service to Europe—

The COURT.—And which is claimed is similar to the particular provision under investigation here.

Mr. GRAHAM.—Yes, your Honor, which is claimed by us is exactly the same.

(Testimony of Fred L. Doelker.)

"To touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once unto the port of" —whichever port it might be. Now it is my understanding—

Mr. GRIFFITHS.—Pardon me, Mr. Graham, there being filled in at the point where you left off reading the port of destination.

Mr. GRAHAM.—Yes, Mr. Griffiths, I intended to say that.

Q. (Continuing.) It is my understanding that your custom is to operate as you state, under that bill of lading. The deviation clause in your bill of lading being similar to the one under investigation in the Shipping Board bill of lading, you would say that this vessel did not violate the custom in going in the order "Hamburg, Rotterdam, Cardiff": Is that correct?

Mr. MANNON.—If your Honor please, we object to that question as leading.

The COURT.—It is leading, and it is repetition; he has already so testified. I will permit it, however.

A. Yes, I would say so, I would say that that is my interpretation. [288]

Mr. GRAHAM.—Q. I would like to know what a customary route would be in the European-Pacific Service under the words "out of the customary route"; what does that mean?

A. Well, if a vessel went from the Canal to

(Testimony of Fred L. Doelker.)

London and went down to Brazil, she would be out of the customary route.

Q. Would you say a vessel had a right to do that under such a clause?

A. I don't know, I doubt it.

Q. How far could a vessel operate in the European-Pacific service under such a clause, "out of the customary route"?

A. I don't know, but my opinion is that she could make any deviation.

Q. You mean within that range, up there?

A. Any range.

Mr. MANNON.—Now just a minute. That is objected to as leading, if your Honor please, and as immaterial.

The COURT.—I will allow the answer to stand. He says "any range."

Mr. GRAHAM.—Q. Are you familiar with bills of lading which have the words, "or beyond" in addition to these words I have quoted to you?

A. No, I cannot say that I am, offhand.

Q. You cannot say you have ever heard of that?

A. No.

Q. It might be possible that there are such bills of lading? A. Yes, it might be possible.

Q. Would you think that such a clause would give a vessel a customary right to go in any other route than this clause here would give them?

A. I don't know.

Q. What do you understand by the use of the word "via" in a bill of lading? Have you had any

(Testimony of Fred L. Doelker.)

experience in using that word? Do you use it at all? A. Yes, we use it.

Q. What does it mean in the trade?

A. A transshipment port.

Cross-examination.

Mr. MANNON.—Q. I understand your testimony to be substantially, [289] in regard to this bill of lading, the Shipping Board bill of lading, Pacific form, that has been shown you, that where those words are used the boat can go in or out of the customary route, she can go practically anywhere? A. Anywhere, yes.

Q. Who drew this bill of lading, do you know?

A. We make that bill of lading up here.

Q. When you say "We do," who makes it up, specifically?

A. Under my supervision and the approval of my principals.

Q. What does this clause mean, I want to read Clause 10 on the back of it: "Also if a vessel entrusts or delivers the aforesaid merchandise or treasure to any other vessel, steam, motor or sail, her agents or other person, for the purpose of being forwarded to any port or place other than the regular ports in the customary route of this line, or to any port in said customary route at which the vessel may not call on her present voyage, which the steamer is hereby authorized to do, such company or person so selected shall be regarded exclusively as the agent of the shipper or owner,

(Testimony of Fred L. Doelker.)

and such agent shall alone be liable." The part of it that I wanted to ask you about particularly was what this means, "which the steamer is hereby authorized to do."

A. That gives the vessel the option to transship if she don't want to call at the port, on account of insufficient quantity of cargo.

Q. And "which she is hereby authorized to do," means that she can call at substantially what ports she wants, or can omit ports?

A. Yes, or omit ports.

Q. That is what Clause 10 is put in there for?

A. To give her the option. She may advertise a port and not get sufficient cargo, and she can transship the cargo, rather than go to the expense of calling at that port.

Q. You don't know whether there is any such clause in the Shipping Board bill of lading that was shown to you, or not, do [290] you?

A. I do not.

Q. There is not any such clause, as a matter of fact. A. I don't know.

Q. Clauses with regard to liberty to call, or deviation, are put in various bills of lading used by San Francisco shippers, are there not?

A. Not by the shippers; the steamship people make up the bill of lading.

Q. And your bill of lading is not like other bills of lading in every particular, is it?

A. Not necessarily, no, sir.

(Testimony of Fred L. Doelker.)

Q. And there are reasons for the variations, I suppose?

A. According to the individual company, yes.

Q. When claims arise on account of damages to cargo, I take it you interpret your rights by what is in the bill of lading, do you not?

A. By our own bill of lading.

Q. And not by what is in the bill of lading of anybody else? A. No, sir.

Q. And not by custom?

A. By our own bill of lading.

Q. The bill of lading is the thing that determines that? A. Our own bill of lading.

Q. I want to show you this same bill of lading of the Shipping Board; they have a stamp on here, they have stamped the words on here which are as follows: "The vessel shall have liberty to deviate for the purpose of making trial trips." What is meant, if you know, by that word "deviate"?

A. I don't know, but I assume it means she wants to make a special trip for testing out the engines.

Q. What does "deviate" mean, if you know, with regard to shipping?

A. I would say that "deviate" in that case would mean to go out of the customary route.

Q. Did you ever hear of deviation in connection with shipping matters?

A. That deviation there is not a cargo deviation; that [291] is deviation in regards to the condition of the vessel. They want to find out the condition of the vessel before she starts on her voyage.

(Testimony of Fred L. Doelker.)

Q. What does it mean, though, in regard to "deviate"? She deviates from some of the voyage, does she?

A. That is the first time I have seen that clause; I have heard of it before, but this is the first time I have seen it. We don't use the clause.

Q. You could not tell? A. No.

Q. In your bill of lading, do you use the word "deviation" at all?

A. I don't know without reading the bill of lading over.

Q. You couldn't tell that? A. No.

Q. Do you know of such a term used at all in regard to shipping?

A. Yes, I have heard the term used.

Q. What do you understand the term to mean in shipping? A. To deviate?

Q. Yes. A. To go out of her regular route.

Q. So that, under the clause in that Shipping Board bill of lading, you looked at, where she could go in or out of her customary route, that would mean that you could take the ship and cargo practically wherever the ship owner wanted to?

A. I would say so.

Q. Under a clause that reads like this, would you tell me what you would understand it to mean, where the ship might go: "Now lying in the port of Fiume and bound for Dunkirk, with liberty to call at any port or ports in any order whatsoever, and to be delivered in like order and condition in the aforesaid port of Dunkirk." Under a bill of lad-

(Testimony of Fred L. Doelker.)

ing like that, for instance, could the ship go to Glasgow? A. I would say so, yes.

Q. There would not be any question about that in your mind, would there?

A. No, sir. I would say so. [292]

Q. Could she, however, come to a port in America, under that bill of lading, where she is going from Fiume to Dunkirk?

A. I would say she could if she were in distress, or something like that.

Q. But unless there were peculiar circumstances, could she?

A. Yes, I would say that she could go to America under the deviation clause.

Q. Under a deviation clause that reads like this, I would like to know where the ship might go; "With liberty to proceed and to stay at any port or ports in any routes in the Mediterranean, Levant, Black Sea or Adriatic, or the coast of Africa, Spain, Portugal, France, Great Britian and Ireland, for the purpose of delivering coals, cargo or passengers, or for any other purpose whatsoever." Under a deviation clause like that, could the ship go from Malaga, in Spain, up to a port like Burriana, in the Mediterranean?

A. I would say so, but I would say she could not go to America in that case.

Q. Why couldn't she go to America in that case?

A. Because the clause is more or less restricted to names and countries.

(Testimony of Fred L. Doelker.)

Q. But she could go to any of the ports in those countries?

A. She could go to any of the ports in those countries.

Q. But not to America? A. No.

Mr. MANNON.—If your Honor please, the first deviation clause I read to the witness was read from the case Leduc vs. Ward; the second deviation clause I read to the witness was read from the case of Margretson vs. Glynn.

Q. If you have a deviation clause like that one we have been talking about in the Shipping Board form, and cargo was shipped on a boat out of San Francisco to any port, she can go to practically any other port, can she, under that clause?

A. Under that clause, yes. [293]

Q. It doesn't make any difference where the other port may be?

A. I would say it makes no difference.

Q. And that is the custom, and has been the custom in San Francisco during the time you have testified about? A. Yes, sir.

Q. Where else do Grace & Co. advertise the Johnson Line besides in "The Guide"?

A. I think in the "Commercial News" at that time, and the "Shipping Register," and the "Journal of Commerce."

Q. Is this "Shipping Register" you speak of a reliable paper?

A. Yes, I would say so. I am not sure that it

(Testimony of Fred L. Doelker.)

was in existence at that time. The Johnson Line has advertised in it since it has been in existence.

Q. Of course, if you are not sure that it was in existence, you could not say whether it was reliable or not, referring to 1919.

A. I don't know as to 1919.

Q. You think the "Commercial News" is a reliable? A. Yes, sir.

Q. You think "The Guide" is reliable?

A. Yes, sir.

Q. That is why you advertise in them, I suppose?

A. Yes, sir.

Q. I suppose those papers make mistakes sometimes, don't they?

A. I don't know, but any of us are liable to make mistakes.

Q. You would expect sometimes those papers to be wrong, wouldn't you? A. Possibly.

Q. You said something about sending out written notice to your shippers as to where your ships were going.

A. Yes, we send out notices from time to time.

Q. And those notices tell where your ships are going?

A. More or less; they are subject to correction under certain conditions.

Q. And you use the telephone sometimes, do you, to notify shippers as to where the Johnson ships are going?

A. Yes, we sometimes use the telephone.

(Testimony of Fred L. Doelker.)

Q. You do quite a business over the telephone, don't you? [294]

A. Our department uses the telephone quite a little; some demand letters.

Q. And you do business by mail? A. Yes, sir.

Redirect Examination.

Mr. GRAHAM.—Q. On this question of deviation, you testified that in your opinion the ship could take the regular route or the customary route; what would you deem to be the customary route, or how would you fix the customary route, by what means, how would you know what was the customary route?

A. I would say owing to the trade she was employed in.

Q. What port would that take in?

A. The Johnson Line would take in any ports in Europe.

Q. Any ports in Europe? A. Yes.

Q. And whether you advertised, or not?

A. And whether we advertised or not.

Q. You do not make it a practice to send out these notices that Mr. Mannon spoke about, do you?

A. We send out notices from time to time.

Recross-examination.

Mr. MANNON.—Q. Speaking of this customary route matter, the vessels of your line, without any deviation clause at all, could go to any of the European ports you mentioned, couldn't they?

(Testimony of Fred L. Doelker.)

A. No, sir, I would not say so. If we didn't have a deviation clause we probably could not go from Hamberg over to London, we would have to go to London first.

Q. The deviation clause is what provides for that? A. That is my understanding of it.

Q. And you rely, then, on the deviation clause to protect you in sending your ships out?

A. Yes, sir.

Q. In doing that you rely on that clause No. 10 on the back of [295] your bill of lading, the clause that I read to you, do you not?

A. For transshipments, yes.

Q. Is it necessary to have the bill of lading to protect you, or would custom protect you in doing that, do you think?

A. I would say that we would have to have a bill of lading to protect us.

TESTIMONY OF HARRY L. EVANS, FOR RESPONDENT.

HARRY L. EVANS, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Evans? A. E. C. Evans & Sons.

Q. With whom were you associated in 1919 and 1920? A. E. C. Evans & Sons.

Q. What is your position with E. C. Evans & Sons? A. Secretary.

Q. What is the general business of E. C. Evans & Sons?

(Testimony of Harry L. Evans.)

A. Steamship agents, shipping and commission.

Q. That is, you both ship and operate ships?

A. We don't ship; we act as steamship agents, and also as chartering brokers, and freight brokers.

Q. So you are interested in the steamship end of the business, rather than in the shipping end of the business. How long have you been engaged in that business? A. Seventeen years.

Q. In San Francisco.

A. Do you mean myself, personally, or do you mean the firm?

Q. You personally. A. Seventeen years here.

Q. How long has the firm been engaged in business? About 40 years.

Mr. MANNON.—It is a thoroughly established firm.

Mr. GRAHAM.—Q. Are you familiar with the trade known as the European-Pacific service, from the Pacific Coast? A. I am.

Q. You have operated, or taken part in the operation of vessels [296] in that service?

A. Yes, sir.

Q. When did your first connection with this European-Pacific service take place, how far back does it date? A. About 15 years ago.

Q. What line was that?

A. It was then known as the Maple Leaf line.

Q. Within what generel range were they operating?

A. From the Pacific Coast through Magellan to ports in the United Kingdom and the continent.

(Testimony of Harry L. Evans.)

Q. They *were* to continental ports, did they?

A. Yes, sir.

Q. What were some of the ports they went to, say U. K. and continental ports?

A. They made Swansea, London, Dunkirk, and even Antwerp.

Q. Did any of them go as far north as Hamburg?

A. Occasionally, yes.

Q. How long did the Maple Leaf Line operate?

A. From about 15 years ago up to the time of the war.

Q. During the war did you have any connection with European-Pacific trade at all? A. No.

Q. Since the war what has your connection been?

A. The Isthmian Steamship Lines, which were in the same ownership as the Maple Leaf Line, recommenced operations in the same year, and we acted as the general agent, and do act as the general agent on the Pacific Coast for the Pacific U. K. service of the Isthmian Lines.

Q. When did they start their service after the war? A. 1920.

Q. And is still operating now? A. Yes.

Q. Have you ever had any connection with the operation of Shipping Board vessels during that period?

A. We operated several as tramps carrying full cargoes chiefly to Europe, and one steamer which we loaded on the berth.

Q. Which steamer was that?

A. The "Bakersfield." [297]

(Testimony of Harry L. Evans.)

Q. Do you remember the ports she went to?

A. She was loaded for London and Swansea, and was later put into Newport, instead of Swansea, on account of congestion at Swansea.

Q. At what other ports did she call—just those two ports?

A. Just those two. I believe she returned to London and loaded back to New York after she completed discharging.

Q. Was that the first voyage of the "Bakersfield"? A. Yes, it was.

Q. Did you have anything to do with the "Bakersfield" on her second voyage? A. No.

Q. Can you tell the Court just briefly the custom of the trade operating out of San Francisco, here, in the European-Pacific service, with relation to calling at ports of call in or out of their geographical order, what is the general practice, and what do you people do?

A. It is generally the practice in that trade to follow the order which would be most suitable to the particular requirements of the trade at the time. Our particular steamers follow a regular outlined schedule or a regular set of ports.

Q. You do?

A. We are a little exceptional in that, except for the extra steamers which we occasionally have, when they are not needed on the other runs.

Q. How do you run those extra steamers?

A. We run them to such ports as appear most profitable at the time.

(Testimony of Harry L. Evans.)

Q. What regard do you have to the geographical order of the ports in that service and in the operation of these vessels?

A. We always endorse the order of discharge ports on our bill of lading. And is that order in or out of the geographical order?

A. As a rule it is the geographical order, but not necessarily.

Q. Generally geographical?

A. Depending on the stowage.

Q. Do you know what the custom is among other lines here in San [298] Francisco, the general custom here in San Francisco—you have been in the business a good many years, and are pretty familiar with it; what is the general custom, if you know?

A. Generally speaking they follow the geographical order, except at such times as cargo requirements force them out of it.

Q. Cargo requirements might force them to some other order? A. Yes.

Q. I suppose it depends entirely on the vessel, as to how much the cargo requirements would force them out? A. Yes.

Q. Have you ever had any experience with Shipping Board bills of lading? A. A limited amount.

Q. What did you use on the "Bakersfield"?

A. We used the regular form.

Q. The Shipping Board form? A. Yes.

Q. So that you have had some experience with them? A. Yes.

(Testimony of Harry L. Evans.)

Q. I will read to you a clause which is contained in the Shipping Board bill of lading, regular form, used on the steamship "West Aleta," with regard to the deviation clause; it reads as follows: "To touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports more than once, unto the port of Rotterdam"; under that clause, what would your opinion be as to the customary rights of the shipping company in the operation of these vessels? In other words, could they go out of the geographical order and, say, make the trip that the "West Aleta" was intended to make, Hamburg, Rotterdam and Cardiff, would that be customary at that time under these bills of lading?

A. It was customary at that time.

Q. So that the "West Aleta" was performing the customary voyage which was permissible under this bill of lading with that clause? A. Yes, sir. [299]

Mr. GRIFFITHS.—We object to these leading questions. All of this examination has been leading.

The COURT.—Yes. Be careful about that.

Mr. GRAHAM.—Yes, your Honor.

Q. Are you or are you not familiar with bills of lading having this clause, and in addition the words "or beyond"? A. Yes.

Q. You do know of such a bill of lading?

A. Yes.

Q. Can you briefly tell the Court the customary

(Testimony of Harry L. Evans.)

route which a vessel will take under those two forms; is there any distinction in your mind as to one or the other, this clause or the one with this clause and in addition the words "or beyond"?

A. I think the one is simply more restricted than the other.

Q. Just what do you mean by that, in what way is one any more restricted than the other? Would you say that this specific form that you are familiar with restricted the vessel from doing what the "West Aleta" did do, or do you not?

Mr. MANNON.—I think that question is too long and too involved for the witness to answer.

Mr. GRAHAM.—I am trying to get his interpretation of the custom to operate under this bill of lading.

The COURT.—I will overrule the objection.

A. May I look at this? It has been five years since I looked at any of these. We have our own clauses. The wording in this clause should give—whether or not it does legally, or not, I don't know, but it should give, and the intention of it was, to allow the steamer to do exactly what this steamer did. At that time it seemed to be generally the opinion that this clause did allow that.

Q. That is, to make the voyage—

A. To make the voyage in such routes as the stowage, the port conditions, and the cargo required under those particular times. Where is that other clause? [300]

Q. That is the only one.

(Testimony of Harry L. Evans.)

The COURT.—Q. Where the word "beyond" is used. A. Yes.

Mr. GRAHAM.—That is in another bill of lading. I am asking you if you are familiar with that clause in that bill of lading. A. Yes, I am.

Q. I am trying to find out from your opinion as to the relative distinction by adding the words "or beyond"; you have testified that in your opinion the ship could do what she did do in this case? A. Yes, sir.

Q. What papers do you advertise the sailings of your vessel in, or what papers did you advertise them in at that time?

A. We advertise in "The Guide."

Q. Any others?

A. Possibly in others, but I cannot recall them. It is five years ago.

Q. The "Daily Commercial News"?

A. Very likely, but I couldn't be sure about that.

Q. You mentioned "The Guide." What was your purpose in advertising in "The Guide"?

A. To solicit cargo, and also, from our standpoint—the chief purpose was to solicit cargo, and to notify shippers where our steamers were going and try to get our cargo; incidentally, we attempted to establish our route.

Q. That is, you proposed to follow a route which was in "The Guide," or not to follow it, which?

A. To follow it.

Q. How about the reliability of "The Guide"; did you find it reliable, or not?

(Testimony of Harry L. Evans.)

A. Very reliable.

Q. How did they get the information which they put in the paper?

A. By checking up at each office every day.

Q. How about the "Daily Commercial News," do you remember about that?

A. The "Daily Commercial News" was also reliable; I did not place quite as much stress on its reliability as on the other, but they could be considered as fully reliable. [301]

Q. How did they get their information?

A. In much the same way.

Q. If there were two advertisements appearing in these two different papers, and one was different from the other, could you or could you not say that more reliance could be given to one of the papers, or more to the other?

Mr. MANNON.—I submit that that is immaterial.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. You don't remember the "Bakersfield" voyage No. 51?

A. I only remember the particular voyage, I don't remember the voyage number, the one I spoke of was in December, 1919, when we handled her.

Q. Did or did not that vessel have any cargo for the California Wine Association, or do you remember? A. It did.

Q. You remember that it did? A. Yes.

Q. Do you remember where it was going?

(Testimony of Harry L. Evans.)

A. Yes, it had a considerable quantity for Swansea.

Q. Did they discharge it at Swansea?

A. Finding congestion at Swansea, they discharged it, with the agreement of the consignees, at Newport.

Q. Who did you do your business with over there in the California Wine Association, or did you do the business?

Mr. MANNON.—I submit that that is immaterial, if your Honor please.

The COURT.—Objection sustained.

Mr. GRAHAM.—Your Honor, I am trying to show that the California Wine Association made other shipments. Mr. Evans just testified that this ship sailing in December, 1919, which was very close to the time of the sailing of the "West Aleta," I am briefly trying to show the manner in which the business was done with the California Wine Association, with another steamship operator who was operating in the same general manner as [302] the Williams-Dimond Co. is shown to have operated. It is for the purpose of showing the manner in which the California Wine Association did their business. The California Wine Association witnesses are necessarily adverse witnesses to me.

The COURT.—Where the deviation clause was the same as here do you mean?

Mr. GRAHAM.—The deviation clause is exactly the same. Mr. Evans has already testified that the

(Testimony of Harry L. Evans.)

bill of lading was the Pacific Form of the Shipping Board.

The COURT.—Objection overruled.

A. We did our business with Mr. Jenks, I think his name was, the traffic manager, and Mr. Sheehan, his assistant.

Q. What was the method of doing business, how did you conduct your negotiations?

A. In saying we did business with him, and thinking it over, in this particular case this cargo was procured by Williams-Dimond, but in other cases in which we had shipments outside of these boats at a later date, we merely went to them, knowing they had cargo to freight to certain ports, and negotiated with them with a view to making a commission for ourselves for the freighting of that cargo.

Q. In other words, that cargo was being put on vessels operated or not operated by yourselves, which was it?

A. On that particular one, the boat was chartered by us to a firm in Seattle, and we also made the contract for that firm; we engaged the cargo on behalf of the Wine Association with that firm, and then chartered the steamer for a lump sum to a firm in Seattle, and acted as brokers for both of them.

Q. What was the name of that vessel?

A. The "Xenia."

Q. When did she sail?

A. I think within 24 hours of the prohibition law.

(Testimony of Harry L. Evans.)

Q. Do you remember that date?

A. I don't remember that date. [303]

Q. You say within 24 hours of the prohibition law.

A. Within 24 hours of the time it became effective, when this cargo could not have moved. We were required to get this cargo out by a certain date.

Q. I show you here what purports to be an ad of E. C. Evans & Sons, captioned, "Hamburg direct, American S. S. 'Xenia' sails January 14." Is that approximately the date, or do you remember?

A. That is it.

Q. Did she make Hamburg direct, as you advertised it? A. She was diverted to Bremen.

Q. After getting out?

A. After leaving Norfolk, where she called for bunkerage.

Q. What did she have on board?

A. Wine, with a small amount of milk, canned milk.

Q. Who was the wine shipped by?

A. The California Wine Association.

Q. All of it? A. Yes.

Q. Where was only one port, as I understand it?

A. One port.

Q. And it all went to one port? A. Yes, sir.

Q. Am I correct that your negotiations in that case were with Jenks? A. Yes.

Q. Do you know whether or not the California Wine Association knew she was making one or more than one, or any number of ports?

(Testimony of Harry L. Evans.)

Mr. MANNON.—I submit it does not make any difference in regard to some voyage that is not involved here, your Honor.

The COURT.—I think so. It seems to me that this examination is taking too wide a range.

Mr. GRAHAM.—Q. In your dealings with the California Wine Association, in all of your dealings, did they ring you up and ask you the route, or didn't they, or how did they find out the route, or do you know?

A. No, they did not. There was nothing [304] in the contract requiring our going there, although as a matter of fact we familiarized them with the fact that the steamer was simply making that port.

Q. You did yourself? A. Yes, sir.

Mr. GRAHAM.—That is all.

The COURT.—We will take our adjournment now until to-morrow morning at ten o'clock.

(An adjournment was here taken until to-morrow, Wednesday, December 31, 1924, at ten o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [305]

Wednesday, December 31, 1924.

H. L. EVANS, cross-examination.

Mr. MANNON.—Q. Have you always been in the shipping business in San Francisco, Mr. Evans?

A. Yes.

Q. You have not had experience in any other port than San Francisco?

A. I have traveled up and down the Coast, but not permanently in any other port.

(Testimony of Harry L. Evans.)

Q. Of course, you have had to do with bills of lading around the various ports of the world?

A. Yes.

Q. You have been asked and answered some questions about a bill of lading. Will you state to the Court what, among shipping men and shippers of goods, a bill of lading is?

A. A bill of lading is a receipt for the goods, with a description of the intended disposition of the goods, and acts as a receipt for the goods until delivery is made.

Q. It is also a contract of carriage for the goods, isn't it? A. Yes.

Q. The bill of lading is always so described, is it? A. Yes.

Q. As between the shipper and the ship, the bill of lading is the last document that passes, is it not? A. Yes.

Q. And when discussions come up in your business experience as between the shipper and the ship owner and carrier, you always have recourse to the bill of lading, to see what can be done, do you not? A. Yes.

Q. It is a fact, is it not, that in the transit of goods by sea, where a common carrier is handling them, a bill of lading is always issued? A. Yes.

Q. And it is also the fact, is it not, that the bill of lading is said among shipping men to stand for the goods? A. Yes. [306]

Q. And you, of course, are familiar with the

(Testimony of Harry L. Evans.)

practice of sending a draft against the bill of lading through the bank? A. Yes.

Q. The things that are sent through the bank are bills of lading, insurance policies, invoices and drafts? A. Yes.

Q. And that is an almost universal custom with regard to transacting foreign business among shippers, is it not? A. It is.

Q. And that, by the way, is the way goods are imported into San Francisco from European ports very frequently, is it not? A. Yes.

Q. In answering some questions concerning this bill of lading yesterday you were shown this form of the Shipping Board's bill of lading; on the face of it is the word "deviation"; will you please explain what is meant amongst shipping men by "deviation"?

A. "Deviation" is a rather poorly defined term among shipping men. It has always been generally understood to mean a very definite and extreme varying from the expected and prescribed route of the steamer, for some purpose probably not intended at the time of entering into the contract. Later and more recently, and particularly in the English courts, we being familiar with that more than other trades on account of our steamers trading there, some decisions have been so extreme that I think very recently deviation has come to be more restricted, and possibly now covers any change from the originally prescribed route.

Q. When the bills of lading go forward against

(Testimony of Harry L. Evans.)

the drafts and with the other shipping documents, there are no advertisements of routes that go forward, are there? A. No.

Q. You never have known of one, have you?

A. No.

Q. And it is the universal practice not to send anything of that character when the drafts go against the bills of lading, isn't it?

A. As a matter of fact, we go to the extreme, we consider it an extreme, and have gone to that extreme by specifying on [307] the bill of lading the route the steamer will take, the route of ports.

Q. So that when you put your bill of lading out, it shows where the boat is going, on the bill of lading, itself, does it?

A. Yes. That is a more recent practice. That has been done lately on account of these decisions I have referred to.

Q. You were asked with regard to this liberty-to-call clause, or deviation clause in the shipping Board form, which reads, "And to touch at any port or ports in any rotation, or order, in or out of the customary route, and to call at any port or ports more than once." I think you stated also you had been in the business about 17 years. It is a fact that when you first went in business you saw that same clause in bills of lading, is it not?

A. Yes.

Q. And that, really, has been in the oldest bills of lading you have ever seen? A. Yes.

Q. It is a thoroughly established clause?

(Testimony of Harry L. Evans.)

A. Yes, or one similar to it.

Q. That wording, or substantially that identical wording, has appeared in practically all the bills of lading that were in use when you first started in business? A. Yes.

Q. You stated yesterday, I think, that your ships followed a particular route, that is, you shipped, in the main, to certain definite ports? A. Yes.

Q. And I think you also stated you sent some ships off the regular routes at times? A. Yes.

Q. When you do that you put on the bill of lading the ports she is going to, don't you?

A. We do in any event.

Q. You do in any event? A. Yes.

Q. I think you made some statement yesterday in regard to the [308] way the ships out of this port went when they were going to certain European ports; they go in that way and to those different ports, entirely irrespective of the bills of lading, do they not? That is, your testimony is simply that they go to those ports, varying the order of them; am I correct in that?

A. I didn't quite understand your question.

Q. You gave some testimony yesterday with regard to ships going out of San Francisco to certain European ports, I think the United Kingdom and continental ports, and you stated, I think, that the ships went frequently in the geographical order, and frequently in other than the geographical order; am I correct in that? A. Yes.

(Testimony of Harry L. Evans.)

Q. And that was irrespective of the bill of lading clause, as I understand you?

A. You are not speaking of our particular endorsement question, are you?

Q. No. A. Yes, that is correct.

Q. Your ships specify the order in the bill of lading? A. Yes.

Q. And have right along?

A. No, they have not right along; that is a more recent development.

Q. You stated yesterday that you had seen the Shipping Board bill of lading used; it is a fact that it is used on voyages from European ports, United Kingdom and continental ports, to San Francisco, and to Pacific Coast ports, as well as from Pacific Coast ports to the United Kingdom and continental ports. A. Yes, sir.

Q. In other words, there is nothing peculiar about this liberty-to-call clause, or the deviation clause as I read you a moment ago from the Shipping Board form of bill of lading, but it is one that has occurred very many times in bills of lading used at Pacific Coast ports, and also in bills of lading used at [309] European ports; that is correct, is it not? A. Yes.

Q. You gave some testimony with regard to these ships out of San Francisco that went to European ports, United Kingdom and continental ports, I think you specified them; I want to show you some bills of lading; in reference to these bills of lading it is a fact, is it not, Mr. Evans,

(Testimony of Harry L. Evans.)

that there are certain bills of lading which read as this bill of lading that is used here in the Shipping Board form reads with regard to deviation, and there are other bills of lading that are in use that have to do with ports that are beyond, that is, that cover a liberty to deviate and go beyond the ports of call specified in the bills of lading, are there not? A. Yes.

Q. I want to show you these various deviation clauses. You have probably seen them. The Isthmian Steamship bill of lading is yours, isn't it?

A. Yes.

Q. This is one of the bills of lading of the form that you use. I think that was gotten from your office. That is correct, is it not? A. Yes.

Mr. MANNON.—I desire to read this deviation clause in that bill of lading:

> "The vessel with the goods on board either before or after proceeding toward the port of discharge and, although not required by any maritime necessity, may remain in port, proceed by any route and deviate from or change the advertised and intended route at any stage of the voyage and may proceed to and stay at any places whatsoever, although in a contrary direction to or outside of or beyond the usual route to the said port of discharge, once or oftener, in any order, backwards or forwards, for loading and/or discharging cargo, fuel, stores or passengers, and/or for any purpose whatsoever that in the opinion [310] of the

(Testimony of Harry L. Evans.)

shipowners or master may deem advisable. Any such procedure shall be considered not to be a deviation but within the voyage herein intended so fully as if specifically described herein. The above mentioned provisions are not to be considered as restricted by any words of this contract whether written, stamped or printed. The vessel may adjust compasses, dock and go on ways with or without cargo on board, before or after commencing the voyage, and may sail without pilots, tow and assist vessels in all situations and deviate for the purpose of saving life or property."

I offer this bill of lading in evidence in connection with the testimony of this witness, and ask that it be marked Libelant's Exhibit 13.

(The document was here marked Libelant's Exhibit 13.)

Q. One of the services you mentioned here was the Holland-American Line, and the Royal Mail Steam Packet Co.; you are familiar with that service out of San Francisco to the United Kingdom and continental ports, aren't you?

A. Yes.

Q. I show you this bill of lading and ask you if that is not the form which is used and has been used by that line right along?

Mr. GRAHAM.—I object to that question, your Honor, because this witness has not testified that he has any connection with the Holland-American Line, and, therefore, he would not know whether

(Testimony of Harry L. Evans.)

they were using that particular bill of lading, or not.

Mr. MANNON.—This witness has been put on the stand, if it please the Court, to testify to custom. Custom involves two things. One is the contract of carriage specified in the bill of lading, the other is the voyage the ship goes on. Those two things go together. We expect to show that these bills of lading [311] are contracts. We are offering this evidence, with the view, ourselves, that it is not admissible because the bill of lading speaks for itself, and we take it that by offering it we shall not be deemed to have waived our objection to the evidence of custom, or to the particular interpretation by individuals to vary the written contract. We are merely meeting the evidence introduced by opposing counsel.

Mr. GRAHAM.—But Mr. Mannon has asked this witness the question whether that form of bill of lading is in use by that particular line; inasmuch as he is not shown to have had any connection with that line, I do not see how he can know whether it is in use by them, or not.

Mr. MANNON.—He cannot testify to what is done under a specifie bill of lading unless he knows what the ship is, and what the bill of lading is; but I submit to your Honor—

The COURT.—I will overrule the objection.

Mr. MANNON.—Will you answer the question now, Mr. Evans?

A. As far as I know that is their bill of lading.

(Testimony of Harry L. Evans.)

Q. And, as far as you know, it is one that is in use at all the times concerning which you testified yesterday, in 1919, and right on?

A. In 1919 this particular service was not in existence.

Mr. MANNON.—I think the witness who was here from that line yesterday—what was his name, Mr. Graham?

Mr. GRAHAM.—Mr. De Lanoy.

Mr. MANNON.—Yes, Mr. DeLanoy, testified when this service commenced. Isn't that your recollection, Mr. Graham?

Mr. GRAHAM.—Yes, he testified that it commenced in 1920.

Mr. MANNON.—His testimony deals with the period after the "West Aleta" bill of lading on this particular voyage. We objected [312] to it on that ground, but it was admitted in evidence subject to our objection. We want to show just what contract he had. If necessary we can call him back here, if you want us to do that, Mr. Graham, but I think Mr. Evans can testify to this. From the bill of lading which I think the witness can identify, I want to read this deviation clause:

"2. DEVIATION.—The said ship or any other vessel employed in any part of the transport shall be at liberty to delay, or anticipate her advertised sailing date either before or after proceeding towards the port of destination, to proceed to and call at any ports or places whatsoever (although in a contrary direction to or out of or be-

(Testimony of Harry L. Evans.)

yond the accustomed route to the Port of destination) once or oftener in any order and for any purpose whatsoever, and in all such ports, places and sailings shall be deemed to be included within the intended voyage; also to sail, with or without pilots; to have the liberty to swing or manoeuvre, to adjust compasses or be removed from one berth to another or be dry docked with cargo on board whether prior to the commencement of, after the termination or at any stage of the voyage";—

I offer this in evidence and ask that it be marked Libelant's Exhibit 14.

(The document was marked Libelant's Exhibit 14.)

Q. In connection with your testimony you mentioned the Harrison Direct Line, of which Balfour-Guthrie & Co. are agents. I show you a form of bill of lading of the Harrison Direct Line. So far as you know that is the same bill of lading used in 1919 and used up to date for the Harrison Direct Line?

A. Yes. I did not testify as to any particular lines, but I am familiar with the lines. [313]

Mr. MANNON.—We desire to offer this in evidence in connection with the testimony of the witness. I want to call attention to the Deviation clause in it, which reads as follows:

". . . . with liberty for such steamship or substituted steamer, either before or after proceeding toward the port of destination above-

named to proceed to or return to and stay at any ports or places whatsoever, including any in a contrary direction to, or out of, or beyond the customary route, once or oftener, in any order backwards or forwards, for the purpose of trading or for any purpose whatsoever, and all such ports, places and sailings shall be deemed included in the intended voyage."

I ask that this be marked Libelant's Exhibit 15.

(The document was here marked Libelant's Exhibit 15.)

I desire to also offer in evidence the form of bill of lading used by the United American Lines. Mr. Chandler was here from that concern and testified. I am offering this now to avoid calling Mr. Chandler back here. This reads with regard to the liberty-to-call or deviation clause as follows:

"The carrier may substitute another vessel or vessels or tranship the whole or any part of the goods by any other vessel, whether operated by the carrier or by others at the original port of shipment, or at any other place or places, and may forward the goods by other means when necessary but shall be under no obligation to do so. The vessel with the goods on board, either before or after proceeding toward the port of discharge may remain in port, proceed by any route and deviate from or change the advertised and intended route at any stage of the voyage and may proceed to and stay at any place whatsoever, although in a contrary direction to or outside of

(Testimony of Harry L. Evans.)

or beyond the usual route to the said port of discharge, once or oftener, in any order, [314] backwards or forwards," . . . .

I ask that this be marked Libelant's Exhibit 16.

(The document was marked Libelant's Exhibit 16.)

Q. Now, Mr. Evans, these bills of lading with the deviation clause in them like the one that has been read to you from the Shipping Board bill of lading, are in use all over the world, aren't they? A. Yes.

Q. And, so far as you know, they are interpreted in the same way all over the world, aren't they?

Mr. GRAHAM.—I object to that, your Honor. This witness has not testified he knows about the interpretation of the custom all over the world; he has testified to the custom here in San Francisco.

Mr. MANNON.—That is true, but I am cross-examining him on the subject.

The COURT.—Objection overruled.

A. The interpretation, as we are given to understand, is generally the same, although considerably stricter in some countries than in others.

Mr. MANNON.—So far as the shipping men are concerned the interpretation is the same?

A. The understanding is generally the same.

Q. The fact of the matter is that in the maritime business you have particular clauses that have been in general use all of the time that you have been in business, with regard to deviation and other things? A. Surely.

(Testimony of Harry L. Evans.)

Q. And those clauses are usually known to mean a definite thing? A. Yes, sir.

Q. And these bills of lading that I have shown you here, giving the liberty to call, for the ship to go to any given port, or beyond, represent one clause in a bill of lading, and the bill [315] of lading like the Shipping Boards represents another bill of lading, so far as language goes?

A. So far as language goes; yes.

Q. When you say you are given to understand about these matters, the fact of the matter is when you want to find out what your liability is under a bill of lading, and a serious enough question is involved, you employ a lawyer, don't you?

A. We do.

Q. I want also to ask you about the papers that you advertise in; you specified yesterday, I think, "The Guide," did you not? A. Yes, I did.

Q. And you also advertise in the "Daily Commercial News"?

A. I thought I did at that time. I don't remember about at that time. We do at the present time.

Q. What other papers do you advertise your sailings in?

A. We advertise in the fruit canners' paper, I have forgotten the exact title of it.

Q. It is a fact, is it not, that most of the shipments out of San Francisco to the United Kingdom and continental ports are, and ever since 1919 have been, canned goods, or rice, or dried fruits, barley, and things of that character? A. Yes.

(Testimony of Harry L. Evans.)

Q. That is the general character of the shipments? A. Yes.

Q. So that our largest shippers are necessarily the people who deal in those particular products?

A. Yes.

Q. These wine shipments were unusual, so far as you know, weren't they? A. They were.

Q. If a ship is not advertised at all—we have had some testimony here that ships go out of here not advertised at all—how would you expect, as a shipping man, for the shipper, the owner of the cargo, to know where the ship was going, what ports she was to touch at?

A. As a rule, a shipper, except in extreme cases of the market, is more or less disinterested in just what ports she does go to, provided it is a recognized line that keeps [316] generally within a certain sphere.

Q. Of course, you would not think that a shipper, in interpreting where his cargo was going to, and interpreting his bill of lading, would expect, say, that goods destined to Liverpool would go first to the Cape of Good Hope, or some place like that, would you?

A. No, that would be extreme.

Q. And you would feel that if anything happened to the goods while they were on the way to the Cape of Good Hope, under any of these bills of lading, that the owner of the ship would be responsible for taking them down there and losing them, wouldn't you? A. Surely.

(Testimony of Harry L. Evans.)

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—Q. Do you remember, Mr. Evans, the route of the "West Aleta"? I show you here a copy of the advertisement which appeared in "The Guide," from which you will note that it says Hamburg, Rotterdam and Cardiff.

A. Yes.

Q. You testified that in your idea it would be a deviation to go out of the prescribed route; can you state what you would consider as the custom about the prescribed route in the case of the "West Aleta," out of which you would say it would be a deviation?

A. It is generally accepted, outside of certain extreme decisions that have been given recently, that have been recently given in a country to which we operate, that a steamer may go within certain recognized spheres without deviating. A steamer could not go to the Cape of Good Hope, however, no matter what the wording was. Shipping men would generally concede, although we protect ourselves further beyond that, that a steamer in a specified trade would not be considered as deviating if she kept within those limits. I just testified [317] that there was a distinction between classes of bills of lading. I would like to modify that to the extent that in my opinion the word "beyond" refers rather to their going not just a little above the port to which the boat had

(Testimony of Harry L. Evans.)

been finally destined, but to going beyond that particular sphere.

Q. Just what do you mean by "sphere"? Take the case of the "West Aleta," in the advertisement of the route I have shown to you, what is your understanding of sphere in relation to that named voyage?

A. Well, that is a regular voyage to the United Kingdom and the continent, which would make Hamburg as the extreme north, and Bordeaux as the extreme south, and would include the east coast of Ireland.

Q. So that that is the sphere?

A. Of the United Kingdom and continent.

Q. Do I understand you that in your opinion you would not consider it to be a deviation if it went within that sphere, or that it would be a deviation?

A. I say that in my opinion it is generally the consensus of shipping men, and recognized in the trade, that that is not a deviation, the rotation of ports in that sphere is not a deviation; but we go further, as I have said, and don't take any chances on it, we cover ourselves one way and another.

Q. You testified that you went to the extreme and specified the ports of call, I take it, in the order which the ship makes; do you or do you not consider that that is an extreme measure which you take?

(Testimony of Henry L. Evans.)

A. I think it is extreme; I know of no other line doing it.

Q. You further testified that you only went to that extreme recently; do you remember how recently that has been?

A. It was at the time we resumed the sailings of the Isthmian [318] line following the war, which was early in 1920.

Q. Previous to putting that extreme measure on the bill of lading, how did you clause your bill of lading?

A. We had no clause in the bill of lading, but whenever we followed a course other than the exact geographical route we protected ourselves.

Q. You have been shown these two types of bills of lading, as Mr. Mannon has described them, some with the words "or beyond" and some without the words "or beyond." I will read you again this particular clause, if I may, in the Shipping Board bill of lading, with which you testified you are familiar: "And to touch at any port or ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once."

I wonder if you can just briefly say what is meant by "in or out of the customary route," in relation to a comparison with the phrase "or beyond." What is your idea of the distinction, if there is any, or do you think there is any distinction?

A. As previously stated, I think that while we

(Testimony of Henry L. Evans.)

were careful to have that put in, or, rather, our advice was to have that put in our bill of lading on account of its possible legal value, I think it is generally accepted that there is a similarity, that the words "or beyond" have not any significance, other than to limit the steamer going beyond the particular route which is generally within the sphere of that trading route.

Q. Do I understand you then to mean that the words "or beyond" in a bill of lading in this particular service, would or would not entitle you to go past, say, Hamburg, or past Bordeaux, which you have named as in the sphere; is that correct, or not?

A. That is my understanding, although, as I say, we have put that word in because we are not certain of the outcome. They [319] may be more restricted.

Q. You further testified that there was a difference, so far as language was concerned; you stressed the difference, so far as language was concerned. Do you mean that there was not any difference, so far as interpretation was concerned?

A. There is undoubtedly a legal difference, but I do not think that in the minds of the shipping community there is a difference. We recognize the difference, and we put it in; rather, we figured that there might be a difference and had it put in. I do not think the shipping fraternity in general makes any great difference in the restriction.

(Testimony of Henry L. Evans.)

Q. Am I right in concluding that you would or that you would not consider your rights the same under a bill of lading with or without that "or beyond" clause?

A. I would consider them the same, but feel much safer the other way.

Q. Do you know of any decisions on this "or beyond" clause, as we have spoken of it here?

A. I think there is a case pending at the present time, but I am not familiar with it.

Q. You are not familiar with the case that was decided in New York recently, are you, on this very question?

The COURT.—Is not the extent to which you can go with the witness to establish a custom? You are asking him now about the legal end of it, aren't you?

Mr. GRAHAM.—He said he had heard of decisions which had gone to the extreme, and I am just asking him if he knew that case. I think that is all, Mr. Evans.

Recross-examination.

Mr. MANNON.—Q. You were asked some questions by Mr. Graham in regard to the meaning of the words "or beyond" in this bill of lading. I take it that so far as you know the [320] meaning of the words "or beyond" there is not any difference in San Francisco, or in Liverpool; in other words, they mean the same in San Francisco, in Liverpool, as in any of the other recognized ports of the world?

(Testimony of Henry L. Evans.)

A. I think the interpretation has been stricter in certain places than in others, yes.

Q. When you speak of "interpretation," you mean the courts' rulings?

A. The courts' rulings.

Q. And when you spoke of "extreme decisions," you meant recent decisions, decisions that have recently been called to your attention, I mean, did you not? A. Very likely.

Q. And you were advised by counsel as early as 1920 that you ought to specify your ports of call in your bills of lading as a precaution?

A. As they put it, as an extreme precaution.

Q. And you have consistently followed that practice since you have been handling shipping since the war period, haven't you? A. Yes.

TESTIMONY OF ALFRED E. WOLFF, FOR RESPONDENT.

ALFRED E. WOLFF, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Wolff?

A. The firm of Wolff & Kirschmann.

Q. How long have you been associated with that firm?

A. Six years, since the firm was organized.

Q. What is the general business of the firm of Wolff & Kirschmann?

A. Importing and exporting, shipping.

(Testimony of Alfred E. Wolff.)

Q. What markets do you deal with? Do you deal with any one market, Mr. Wolff?

A. Principally Australia, the South Seas, and the Orient.

Q. Are you interested in the shipping business from the point of view of a steamship operator, or one who ships goods? [321]

A. Primarily, as one who ships goods, and one who buys goods shipped aboard.

Q. I show you a copy of a bill of lading which has been introduced in evidence in this case, and call your attention to a clause which is under discussion here. This bill of lading is the United States Shipping Board Emergency Fleet Corporation, Pacific form, bill of lading. The clause under discussion is the deviation clause, which reads as follows: "And to touch at any port or ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once." I ask you if you have had any experience with that bill of lading, or know anything about it?

Mr. MANNON.—If your Honor please, I do not desire to lengthen this discussion. We have no pleading here about the custom, itself, that counsel is trying to prove. This witness, however, is engaged in the Australian and South Seas and Oriental trade. I had understood that this custom did not have to do with that trade, and, if not, then we take it that this witness should not testify. So I object to the question on the ground that it is immaterial, irrelevant and incompetent.

(Testimony of Alfred E. Wolff.)

We have no statement of the custom in any pleading; we have no statement from counsel what the custom is that he seeks to prove. We understood it was a custom that did not have anything to do with the Australian, South Seas and Oriental trade.

Mr. GRAHAM.—May it please the Court: Yesterday I told the Court that I believed we had the privilege of showing to your Honor the interpretation of a commercial document. I believe that Mr. Wolff can testify to some relationship which he has had with the making up of this particular document. [322] I further stated that so far as custom was concerned, I thought we would be able to prove, if your Honor wished it, that it was customary to operate in services all over the world, out of the Pacific Coast, out of geographical order. I do not intend to go to that extent, but I will if your Honor wants any evidence on that point.

The COURT.—I will overrule the objection.

A. Yes.

Mr. GRAHAM.—Q. What has been your experience with it, and in what connection?

A. Both as shippers and as receivers of cargo that we have bought.

Q. Do you know anything about the drawing of this bill of lading? A. In what respect?

Q. Do you know by whom it was drawn up?

A. Do you mean the printed form?

Q. Yes, the printed form.

A. No, not absolutely. I know that the form,

(Testimony of Alfred E. Wolff.)

as a whole, is prepared by the Shipping Board, or the Emergency Fleet Corporation.

Q. That is all you know about it?

A. It it were a rail and ocean bill of lading it would have been prepared in conjunction with the Interstate Commerce Commission.

Q. Did you, or did you not, have any connection with the committee appointed in San Francisco to go over the bills of lading?

A. Yes, I was a member of that committee.

Q. Is or is not this bill of lading one of those that was gone over?

A. Yes, it was one of the forms that we studied.

Q. What was that committee?

Mr. MANNON.—I submit that that is immaterial, your Honor.

The COURT.—Yes, I think so. Objection sustained.

Mr. GRAHAM.—Q. I call your attention to this clause which [323] I will read to you, and ask you if you know anything about the customary interpretation of that clause in the trade in San Francisco by users?

A. The average shipper, myself included, would understand that in a bill of lading with that clause in it that if the ship wanted to deviate or change the order of her ports, she had that right.

Q. I show you a copy of the advertisement which appeared showing the route of the steamship "West Aleta," sailing from San Francisco January 6, 1920, which reads Hamburg, Rotterdam, Cardiff,

(Testimony of Alfred E. Wolff.)

and which, you will note, is out of the geographical order. In relation to that route, that would be the customary interpretation of that particular clause?

A. We ship all the time on vessels that make routes of that kind, both from the Orient this way, and from Australia this way; we are shipping at present on vessels that are more or less out of the geographical order, as this is; and under a form of bill of lading of that kind, we would make no objection; in other words, if we wanted a direct shipment, we would specify so when we booked our space, if we had to have a cargo come direct.

Q. So, in your opinion, would the ship be or would it not be authorized to make such a trip as this under such a clause?

A. According to commercial custom, yes; it would make no difference to us.

Q. You testified about your Australian shipments here; can you briefly name how they come? Have you one in mind now?

A. I am booking space now, or will to-day, in a steamer that is going from Australia up to Java, and was originally scheduled to come from Java direct here. I have about 3000 tons of cargo for a port south of Java, and that steamer is going to divert slightly to the south, maybe a day or two sailing, and then come [324] on to San Francisco. The Java cargo will suffer a deviation, but mine will not. It is a customary thing if a buyer must have his cargo direct to specifically

(Testimony of Alfred E. Wolff.)

guard against that in his contract of sale and contract of affreightment.

Q. As to the route of the vessel, what is customary as to notice to shippers, on the part of the steamship company, as to the route they are taking?

A. If it is a regular line, if it is a line service, do you mean?

Q. Yes.

A. If it is a line service, your traffic man, or yourself, will know the customary trade routes in connection with the cargo that is being shipped. If you are in doubt, you will acquaint yourself with the itinerary of the steamer, either by going to the steamship line, or to the clerk, or by referring, as we do in our office, to the advertisement, usually in "The Guide."

Q. You subscribe to "The Guide," do you?

A. We subscribe to "The Guide," and keep two copies hanging in the office for convenient reference.

Q. You do refer to "The Guide"?

A. Yes, daily.

Q. For what purpose?

A. For the purpose of knowing the sailings and the itinerary of boats.

Q. How much reliance do you place on "The Guide"?

A. Knowing the publisher as a man who has intimate knowledge of ships, I place as much reliance, if not more, on "The Guide" than I would on information given by a junior clerk in a steamship company's office, because I know that Mr.

(Testimony of Alfred E. Wolff.)

Empey, the publisher of "The Guide," circulates amongst the heads of steamship companies, and knows the movements and makes a point of keeping his publication up.

Q. Do you subscribe to any other shipping paper in San Francisco?

A. No other daily shipping paper. [325]

Q. So you cannot testify as to advertisements in any other shipping paper?

A. No. We used to subscribe to the "Journal of Commerce," and before that to the "Commercial News," but they don't give the same service, and don't cover the ground "The Guide" does.

Q. What about the service of the "Daily Commercial News" relative to the advertisement of routes, what can you say about that?

A. The advertising might be the same, but there was not the same degree of interest on the part of the publisher in keeping the advertising up to date. If there was a change in a vessel's schedule and it came to the knowledge of Empey, he would go to the steamship company and suggest changes in the advertisements, whereas the "Commercial News" might run stale ads.

Q. How about the comparative reliance by the shipper on the "Daily Commercial News" and "The Guide"?

A. As far as we were concerned, we did not take the "Commercial News" for shipping news. We took "The Guide" because we could rely on it for shiping news.

(Testimony of Alfred E. Wolff.)

Cross-examination.

Mr. MANNON.—Q. You will bear in mind that clause that was in that Shipping Board Bill of Lading that Mr. Graham read to you?

A. The deviation clause?

Q. Yes. You said that that gave the ship the right to deviate.

A. I did not say so legally, I said commercially we look on it that way.

Q. The answer, as I noted it, that you gave, was that that clause means that if the ship wants to deviate she has the right to. You mean that answer, didn't you? A. Yes.

Q. Just what do you mean when you say a ship has the right to deviate?

A. I cannot answer that from a legal standpoint, I [326] can only speak of it from a commercial viewpoint; is that what you mean?

Q. Yes, I cannot ask you beyond that.

A. From a commercial viewpoint, we are interested in whether we need to get our cargo to its destination quickly, or more cheaply. As a rule, we are interested in the cheapest method. Freight in tramp steamers that may go here, there, and everywhere, is usually a little cheaper than in a fast mail steamer that goes the most direct way. Insurance on both is substantially the same. It doesn't make any difference how many ports a steamer calls at. We usually cover at a flat rate of insurance. Now, I go to a buyer, and he wants to buy for quick delivery; I will go to the steamship company, and say, "Have you a steamer going

(Testimony of Alfred E. Wolff.)

direct" otherwise I don't care whether she deviates, or not.

Q. You use that word "deviate" again. I want you to tell me what you mean by "deviation"—is it something that a boat does? A. Yes.

Q. What is it that a boat does that is a deviation?

A. I do not know that I have ever given specific thought to that. It would be a variation in the voyage.

Q. A variation in what voyage?

A. In any one, or in an announced voyage.

Q. Under that clause, however, the ship is allowed to deviate from the voyage, or go out of her voyage, as you understand it?

A. I would so understand it.

Q. For instance, a ship that is destined for Australia would be authorized to go to, say, Kobe, Japan.

A. Well, you come there to a question of reasonableness and commercial frustration that becomes a matter for lawyers to discuss.

Q. But as a matter of commercial usage, you would not think [327] she could go to Japan under that clause if she were destined for Australian ports?

A. Not under ordinary circumstances, no.

Q. You would consider that a deviation, would you, to Japan?

A. I think that would be the word. I don't know. It might be even worse than a deviation.

Q. Do you think there is anything worse for a ship owner than deviation?

(Testimony of Alfred E. Wolff.)

A. Oh, yes, there are lots of things.

Q. But you think that a vessel bound for Australia could go to Java, say, under this clause?

A. Yes.

Q. Suppose you didn't have that clause in the bill of lading, at all, could she go to Java?

A. It has been the attitude of shippers, generally speaking that she could not. That deviation clause gives the boat rights that she otherwise would not have.

Q. That is, the deviation clause is put in to give the vessel protection?

A. Yes; most clauses in the bill of lading are put in to give the vessel protection.

Q. And the deviation clause, the one that has been read to you in the bill of lading from the Shipping Board, is put in for that reason?

A. Yes. It is not unusual, it is in other bills of lading.

Q. And substantially that clause has been in many of the bills of lading that you have handled?

A. I don't know of a bill of lading that doesn't have an equivalent clause.

Q. There are bills of lading, aren't there, which have wider deviation clauses than this one?

A. Since cases have been brought up under that bill of lading, there have been efforts to amend some of the lines bills of lading so as to make it possible to cover the wide world in a deviation clause, but I do not believe, myself, they are successful. [328]

(Testimony of Alfred E. Wolff.)

Q. But, so far as you know, there may have been cases brought up long before that bill of lading was drawn up? A. Oh, yes.

Q. You have not gone into that question, have you?

A. I have not gone into the legal end of it, at all.

Q. That would become a question for the courts?

A. Yes.

Q. For instance, you would not think that under any bill of lading which you have seen, say where a vessel was destined out of San Francisco for United Kingdom ports, that she would be entitled to go in any other route than through the Panama Canal, or through the Straits of Magellan?

A. Not under ordinary circumstances, but it is conceivable that *force majeure* might cause her to do that.

Q. But that would be permitted under another clause, wouldn't it? A. Yes.

Q. So these bills of lading are used to determine really where the boat is to go, and what she is to do with the goods? A. Yes.

Q. The bills of lading stand for the goods, don't they? A. Yes, they do.

Q. In your business it is ordinary for you to send a draft against the bill of lading through the banks for collection? A. Yes.

Q. That is the way you do your foreign business, isn't it? A. In the main.

Q. And when that is done, you don't send any

(Testimony of Alfred E. Wolff.)

advertisement about the ship, or anything of that character, with the bills of lading, do you?

A. No, but as a rule we sell or buy for foreign shipment; in other words, we are selling now in December for March and April shipment, and as fast as we book our space in a March-April steamer, we will name the steamer to our buyers, and if they don't know the itinerary and they ask us, we will give it to them, or we tell them voluntarily, or they can go [329] to the agent of the line and find out. As a general rule, the buyers know long before they get the documents the line and the steamer, and the agent of the vessel.

Q. If you book March and April space now in a tramp steamer, you would not expect your itinerary to be known, would you?

A. Oh, yes, pretty much. I am talking now of pretty early shipments, March-April is not as far off as it seems. I am booking now for March-April in a Shipping Board steamer, and I know every port she is scheduled to go to between now and then; they may ring in an extra port, but it is unlikely; it is possible, they have the right to do so; but under my booking, they have not a right to ring in an extra port after I put my cargo on board for direct delivery, because I have specifically protected myself on that, my buyer wants the goods direct, he wants them as quickly as he can get them.

Q. And when you put the goods on board, you will get your bill of lading, won't you?

(Testimony of Alfred E. Wolff.)

A. The buyer will on the other side.

Q. Don't you get it here?

A. I am speaking now of import stuff.

Q. If you are bringing something in from United Kingdom ports, there is a bill of lading issued there, isn't there? A. Yes.

Q. And the bill of lading stands for the goods?

A. Yes.

Q. That bill of lading, as a matter of fact, is traded in just as the goods are? A. Yes.

Q. The people you are in contact with, that is, the people you are doing business with, might dispose of those goods, might sell them, before they come into their possession.

A. Then they will get their money in exchange for the bill of lading.

Q. That might be done before the goods are delivered, in other words, while the goods are afloat, they might sell the goods? [330] A. Yes.

Q. And they will exchange the bill of lading?

A. Yes.

Q. That is common practice in the world's trade, isn't it? A. Yes.

Q. And they necessarily have to rely on what the bill of lading says, don't they? A. Yes.

Q. This clause that your attention was called to in the Shipping Board bill of lading form is one that to your knowledge has been used from Pacific Coast ports to Oriental ports?

A. Yes; it is common in all ports of the world, it or its equivalent.

(Testimony of Alfred E. Wolff.)

Q. There is nothing peculiar in that deviation clause to San Francisco, is there, or in that bill of lading? It is one that is used everywhere.

A. Yes.

Q. It is used in all United Kingdom ports, Oriental ports, and Pacific ports?

A. Yes. It is based on the needs of the vessel, in case the vessel has to deviate or does deviate for profit.

Q. That bill of lading is used in all the ports of the world, substantially, isn't it? A. Yes.

Q. And, to your knowledge, ever since the Shipping Board vessels started operation after the war, that bill of lading, or one having substantially that deviation clause, has been in use all over the world by the Shipping Board vessels: That is correct, isn't it?

A. Substantially that, yes.

Q. And substantially that deviation clause has been used by many other ships than Shipping Board ships? A. Yes, sir.

Q. There is nothing peculiar in its use out of San Francisco as compared with its use anywhere else in the world, is there?

A. Not so far as I know. [331]

Q. And the customary interpretation of shipping men is not bounded by national lines; you deal with Oriental ports, and with Australian ports, you know those shipping people, and you sell your goods to them and buy goods from them: That is right, isn't it? A. Quite right; yes.

Office Supreme Court, U. S.
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Transcript of Record.

(IN TWO VOLUMES.)

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. ———

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Petitioner,

No. 617

vs.

ROSENBERG BROTHERS & COMPANY,
Respondent.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Petitioner,

No. 618

vs.

CALIFORNIA WINE ASSOCIATION,
Respondent.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Petitioner,

No. 619

vs.

S. L. JONES & COMPANY, a Corporation,
Respondent.

VOLUME II.
(Pages 421 to 871, Inclusive.)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

15543

Nos. 4748, 4749, 4750

United States

Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeals.

(IN TWO VOLUMES)

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,
Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,
Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,
Appellee.

VOLUME II.

(Pages 421 to 837, Inclusive.)

Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

(Testimony of Alfred E. Wolff.)

Q. You spoke of contracts, of affreightment: I suppose that you mean by that your firm bookings for space, or did you mean your bills of lading?

A. Your firm bookings for space, your contract for the space before the goods are shipped.

Q. You said something about keeping in touch with people who were engaging space: How do you do that?

A. That is a matter that is done more or less daily by the different members of the firm and our staff; it is done by contact on 'Change; it is done in the mornings automatically by reference to "The Guide," which Mr. Graham showed me that comes in in the morning and it is studied by one of the clerks, and any variation in the announced itinerary of a vessel is called to our attention. There is no set routine. Sometimes it is by cable from the other side.

Q. You have a great many sources of information about these matters; sometimes you get it out of "The Guide," sometimes you will get it on 'Change: Is that right?

A. Yes; but the check-up in our office, at least, is usually done, no matter what casual information we get on the floor of the 'Change; it is done the first thing in the morning from "The Guide"; "The Guide" verifies it.

Q. If your contract of affreightment says one thing and "The Guide" says another, upon which do you rely?

(Testimony of Alfred E. Wolff.)

A. Then we go to the steamship company and find out why. That does not happen, though.

Q. You would not rely on "The Guide," but you would rely on the contract of affreightment in that instance, wouldn't you? [332]

A. Oh, of course; but sometimes mistakes happen, even in contracts.

Q. And, of course, it is a fact that ships are frequently advertised in "The Guide" for certain ports, and for various reasons afterwards withdrawn from that trade?

A. Yes; they may be advertised for four ports, and one is withdrawn for lack of cargo.

Q. Or, if there is something the matter with the ship, or for various other reasons: Is that right?

A. Yes, quite right.

Q. Do you sometimes have occasion to make claims against vessels because of damaged cargo?

A. Yes, sir.

Q. When you do that you look for your rights under your bill of lading, do you not?

A. Sometimes we succeed in collecting where we have no legal right under the bill of lading—as matter of goodwill.

Q. But when you look to see whether you have a right to collect a cargo damage claim you look at your bill of lading to see what is there provided, do you not? A. Yes.

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—Q. In speaking about the cus-

(Testimony of Alfred E. Wolff.)

tomary interpretation of this deviation clause in the Shipping Board bill of lading which I have shown you, do I understand that you are familiar with the interpretation in San Francisco and other ports of the world, or is your familiarity with the customary interpretation solely in San Francisco, as interpreted around here?

A. In doing business with other ports of the world, questions naturally arise under bills of lading, and I think I know what our correspondents in other parts of the world—what attitude they take toward documents.

Q. Now, as to the sale of goods, or the sale of bills of lading—there is practically no distinction after the goods are shipped, [333] being an importer, how do you fix the route of a vessel? Suppose you would buy a bill of lading after goods are shipped to you, what is the procedure then about the shipment?

A. That is fixed up at the time the goods are bought, which is long before the time you see the bill of sale. If you have any restriction as to the method of delivery, you impose that on the seller of the goods. Otherwise, all he has to do is to make the shipment on time and to the port you want. The exact route otherwise does not matter. It depends on the commodity, and on the market, and sometimes it depends on the time of the year.

Q. If the shipper does not impose on the ship a duty to make a particular route, what is your idea of the customary right of the ship to make routes?

(Testimony of Alfred E. Wolff.)

A. The customary right is substantially as expressed in that bill of lading. The ship advertises a service, but reserves the right to vary from that service as business may require. It is almost an impossible thing to hold a ship that is carrying cargo for a great number of consignees to an absolutely ironclad route; some shipper might fall down and not supply his cargo, and they cannot get more to fill her up for a given port, or they may get too much for that port and cannot discharge it all, having regard for the safety of the ship; in other words, they might have to go to that port last, because the biggest bulk of the cargo is for that port. There are so many things that come up in freight ships; in passenger ships, of course, it is somewhat different.

Q. You say that in freight ships it is almost impossible to hold the ship down to a fixed geographical order; do you mean that it is impossible, or that the shipper would have no such intention to hold the ship down?

A. Both, I should say. The [334] shipper has no intention, because in most cases it makes no difference to the shipper; you don't buy your goods to be used on the day they get here, because you cannot figure to the dot on the day they will get here; an importer carries stock enough to carry him along so that if his goods are two or three weeks late he won't run short. Once in a while he may miscalculate.

(Testimony of Alfred E. Wolff.)

Q. Suppose it did make a difference to the shipper, what would he do then?

A. Frequently, for instance with goods that we bring in from China to catch the holiday trade, goods which we cannot buy until October, when the season opens, we figure in bringing those in on a fast mail steamer, in order to get them here in time for the trade. We impose that condition. Otherwise, they might be shipped on a freight boat that would go to various China ports and perhaps go down to Manila and at Honolulu, and take 60 days to get here, instead of coming, say, in 25 days by a direct boat.

Q. And it is customary, is it, to take that roundabout routeing in the Oriental trade, unless provided against? A. Yes.

Q. This bill of lading says San Francisco as the port of shipment, and Cardiff, Wales, as the point of destination; is it customary to say anything more in a bill of lading to make an advertised route, or isn't it customary? A. It is not customary.

Q. Would you say that with those two ports named, that the ship could or could not go in the route which she was advertised to go?

A. Commercially, she could.

Q. You spoke about your contract of affreightment, your contract for space, and your bill of lading; there is a differentiation, isn't there, between those?

A. When the goods are shipped the bill of lading takes the place of the contract of affreightment. If

(Testimony of Alfred E. Wolff.)

there is anything vital in the contract of affreightment that overrides the clause in the bill of lading, we endorse it on [335] the bill of lading. If I put in my contract of affreightment "Shipment by direct steamer," and later they are shipped on a steamer scheduled to go direct, we put that in the bill of lading specifically.

Q. After your contract of affreightment is made up, naming two ports, that is, the port of shipment and the port of destination, what is your idea as to the right of the ship to advertise to make ports in other than their geographical order, as in this particular case here.

A. If I have not held the ship by any special contract clause to a direct voyage between those two ports, she has the usual commercial right to take cargo for ports in that general direction. I would not say she had the right to go to Kobe, first, although it is done in some lines. Take the Robert Dollar Line, for instance—

The COURT.—Has not the witness covered this ground in his direct examination?

Mr. GRAHAM.—I think so, your Honor.

The COURT.—I think so, too.

Mr. GRAHAM.—That is all.

Recross-examination.

Mr. MANNON.—Q. This ship was destined from San Francisco to Cardiff; that was the first port in geographical order; according to the custom that you have testified to, would she be entitled to go into

(Testimony of Alfred E. Wolff.)

Baltic Sea ports, or any of them, before going to Cardiff?

A. There would be nothing in the custom against it; from a commercial man's viewpoint, that would not be a serious deviation.

Q. Could she also go to any of the Mediterranean ports before going to Cardiff?

A. The average steamer has not done so, although I knew one line before the war that did make Mediterranean ports first. [336]

Q. So you would think it was a proper thing, under this custom you are speaking of, for a shipment destined to Cardiff to make Mediterranean or Baltic ports?

A. I don't think it would be considered improper from the shipper's viewpoint.

TESTIMONY OF ERIK KRAG, FOR RESPONDENT.

ERIK KRAG, called for respondent, sworn.

Mr. GRAHAM.—Q. With whom are you now associated, Mr. Krag?

A. The General Steamship Corporation.

Q. What business does the General Steamship Corporation handle?

A. Steamship agents and operators.

Q. What is your specific position in the General Steamship Corporation?

A. Traffic Manager, European Services.

Q. What line does the General Steamship Corporation handle in that European Service?

(Testimony of Erik Krag.)

A. The French Line.

Q. How long has that line been operating out of San Francisco? A. Since 1921.

Q. How long have you been with the General Steamship Corporation in that capacity?

A. Since 1922.

Q. Before that, who were you with?

A. The General Commercial Company.

Q. What is their business?

A. Export and import.

Q. How long were you with them before 1922?

A. Two years.

Q. That is, from about 1920?

A. From 1918 to 1920.

Q. From 1918 to 1920 you were with the General Commercial Company? A. Yes.

Q. Were you or were you not interested in the European Pacific trade then, did you do any business with Europe, or didn't you?

A. We did business with Europe.

Q. What was it, export or import?

A. Both export and import — mostly export. [337]

Q. Mostly export from here to Europe?

A. From here to Europe; yes.

Q. Briefly, what ports were you dealing with at that time?

A. We were dealing with Scandinavian and continental ports.

Q. Did you do any business with England, or didn't you? A. I couldn't say for sure.

(Testimony of Erik Krag.)

Q. Did you have any experience with Shipping Board vessels, or not?

A. With Shipping Board vessels?

Q. Yes, did you make any of your shipments on Shipping Board vessels, or didn't you, at that time?

A. I think we did.

Q. You think you did, but you don't remember?

A. No.

Q. I show you a copy of the advertisement of the steamship "West Aleta" sailing from San Francisco January 6, 1920; you will note that it is scheduled Hamburg, Rotterdam, Cardiff, in that order; I also show you a copy of a bill of lading, which was the ordinary Pacific form bill of lading of the Shipping Board Emergency Fleet Corporation, in which the following deviation clause appears: "And to touch at any port or ports in any rotation or order, in or out of the customary route, and to call at such port or ports more than once." What is your interpretation of that clause in relation to the voyage described in that advertisement?

Mr. MANNON.—I take it, your Honor, that it is not necessary for me to renew my objection? In other words, our objection runs to this line of testimony.

The COURT.—There is no objection reserved to testimony which might be called out in response to that particular question. In other words, his interpretation of that clause is incompetent testimony. His interpretation is not what we want.

(Testimony of Erik Krag.)

He is called to testify to the customary interpretation amongst shipping people. [338]

Mr. MANNON.—We have understood, may it please the Court, that we had an objection here to all of the testimony that went in any way to vary the bill of lading, or to establish a custom contrary to it.

The COURT.—What the practical construction of this clause has been by shippers, by steamship people, is, I think, admissible. I have also admitted, subject to your objection, testimony as to what the custom is. What this witness' or any other witness' interpretation is of a provision of the contract is clearly inadmissible.

Mr. MANNON.—I have not been making an objection to any of these matters, because I understood I was covered, and I did not want to keep interrupting by making objections.

Mr. GRAHAM.—I see your Honor's point, and I will amend the question.

Q. From your position in the French Line, and your experience in the trade, what would you say would be the customary interpretation of that clause in relation to that voyage?

A. I would interpret it the way it reads, to touch at any port or ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once. This would mean that if a vessel for some reason or other changed her route, she would have permission to do so according to the bill of lading.

(Testimony of Erik Krag.)

Q. Could you or could you not say that the vessel in this particular case had a customary right to go to Hamburg and then come down to Rotterdam, and then to Cardiff, or that she would not have that right?

A. The vessel is advertised in "The Guide," and particularly mentioned for Hamburg, Rotterdam and Cardiff. On this basis, I would say that she would be expected to call at Hamburg first, at Rotterdam next, and at Cardiff as the last [339] port.

Q. Under that deviation clause, what would be the customary interpretation of the scope of the right of the ship to deviate, how far could they go off the geographical order?

A. I would say anywhere within reason, within the range of the service in which the vessel was plying.

Q. That is, if the vessel were in the European service and were making certain ports, she could or could not go within those ports: Is that it?

A. She could go within those ports, as she would like.

Q. What is the general understanding in the trade as to European service, what does that mean, what range does that cover?

A. The range of the service, continental and United Kingdom, east coast ports.

Q. How far north and how far south on the continent?

A. On the continent the range is Bordeaux, Hamburg.

(Testimony of Erik Krag.)

Cross-examination.

Mr. MANNON.—Q. Wouldn't you consider that Copenhagen was European service?

A. Copenhagen is included in the itinerary of the Scandinavian Lines, but not of the regular lines calling at U. K. and continental ports.

Q. But you were asked about European service. Copenhagen includes European service, doesn't it?

A. No. When I think of European service I only think of continental and United Kingdom. Scandinavian service is always considered by the lines that operate in that service as a separate range.

Q. The "West Aleta" gets the right to go to the ports Hamburg, Rotterdam and Cardiff on account of that deviation clause, or on account of the advertisement—which? Your attention was called to the deviation clause in the Shipping Board bill of [340] lading.

A. The clause in the bill of lading should be the governing factor.

Q. And the advertisement has nothing to do with it, has it?

A. The advertisement indicates at the time that the intended route of the vessel is Hamburg, Rotterdam, Cardiff, if that is the order that the advertisement was listed in.

Q. But if there were not any advertising at all, there still would be a contract between the shipper and the ship owner, wouldn't there, by the bill of lading?

A. I have always considered that the bill of lading is the contract binding the two parties.

(Testimony of Erik Krag.)

Q. And when you want to find out what the ship can or cannot do about the cargo, or what the rights of the cargo owner are, you look at the bill of lading, don't you?

A. Yes, of course, before making my arrangements for the cargo, I would see where she was going.

Q. And there would be a bill of lading contract whether there was any advertisement, or not, wouldn't there?

A. If there were no advertisement, there must have been some negotiations before the issuance of the bill of lading between the shipper and the vessel.

Q. So that the advertising just takes the place of those negotiations, in your mind, or of some information obtained in some of the earlier negotiations?

A. I should say it would supplement the negotiations.

Q. Be a part of the negotiations and supplement them in some way? A. Yes.

Q. Of course, there are ships that sail without advertising at all, aren't there?

A. Very few, I should say.

Q. There are some out of this port, though, that sail without advertising, aren't there?

A. None of the lines that I know. [341]

(Testimony of Erik Krag.)

Q. In other words, they have to advertise in order to get some cargo?

A. Yes, I should say that that is the custom of any line of any importance, to advertise.

Q. That is why they advertise?

A. Yes, to assist in their business.

Q. Bills of lading are considered, so far as you know, in San Francisco, just like they are in the other ports of the world, are they not?

A. A bill of lading is considered a contract between the ship and the shipper.

Q. And bills of lading having the particular deviation clause in them that Mr. Graham read to you from the Shipping Board form are in use and have been in use all of the time you have known anything about the business?

A. Ocean bills of lading have been in use, so far as I know, as long as I have been in the shipping business.

Q. And they always have deviation clauses in them, too, don't they?

A. To properly protect the ship owner, they should have.

Q. And you have never seen a bill of lading without a deviation clause of some kind in it, have you?

A. No, not to my recollection.

Q. As we have seen here by looking at a great many of these bills of lading, apart from that deviation clause there are a great many other clauses in the bills of lading, are there not, that you are conversant with? A. Yes.

(Testimony of Erik Krag.)

Q. And when you want to find out anything about the rights of the cargo owner, or the ship owner, you look at the bill of lading, do you not?

A. Yes.

Q. And if you have any doubt about what the bill of lading means, you send it to your lawyers, don't you? A. Yes.

Q. And the bills of lading, of course, and the various clauses in the bills of lading you, yourself, know have fixed interpretation [342] by the courts very often, don't you?

A. I presume so.

Q. You know it, don't you?

A. I know that the courts establish certain cases and that certain decisions have been given.

Q. And you do your business with reference to those decisions, don't you?

A. Whenever an important decision on a bill of lading is given, we always follow the case with interest.

Q. And there are publications that you and other shipping concerns take to keep you posted on what the decisions are; isn't that so?

A. Generally speaking, I would say yes.

Q. Of course, you don't know every decision, do you? A. No.

Q. But you keep advised of the Court's decisions from time to time, do you not, and in addition to that you take the advice of your counsel about your bills of lading, don't you? A. Yes.

Q. You said, as I remember it, that under the

(Testimony of Erik Krag.)

deviation clause Mr. Graham read to you from the Shipping Board bill of lading, a vessel could change her route; could she change her route after she sailed from San Francisco? A. Yes.

Q. That is, if she wanted to go in some different route other than advertised, she could go on that different route if she had that clause in the bill of lading? A. Yes.

Q. So she would not be bound by the advertised route, if she had that clause in the bill of lading. That is what I am getting at.

A. If nothing particularly happened between the time she loaded at San Francisco and the time she got to the other side for discharging her cargo, it would be my understanding that on the basis of the ad she would be proceeding to Hamburg, and then to Rotterdam, and Cardiff would be her last port.

Q. But suppose she went out of San Francisco and at San Pedro picked up some cargo she had not expected, and that cargo was to go to some intermediate port between San Pedro and Hamburg, you would expect she could stop at that port, would you? A. Yes. [343]

Q. It would not make any difference whether she had advertised in regard to stopping there, or not?

A. No.

Q. You look at your bill of lading, your contract of carriage, to find out whether she could stop there?

A. Yes.

Q. And the part you would look at in this in-

(Testimony of Erik Krag.)

stance would be the deviation clause; that is right, isn't it? A. Yes, sir.

Q. Mr. Chichester is manager of the General Steamship Corporation, is he not?

A. He is vice-president.

Q. What is your position there?

A. I am manager of European service.

Q. How does your deviation clause read in your bill of lading?

A. I cannot give you the reading of it offhand, but we have a deviation clause there.

Q. But you don't know how it reads?

A. If I can refer to the bill of lading I might be able to tell you.

Q. Have you one in your pocket? A. Yes.

Q. I would like to see your deviation clause. I wonder if we can have that one put in evidence?

A. Would you like to see a copy of our bill of lading?

Q. Yes, thank you. The witness produces this form of bill of lading that is in use by the French Line. I will read the deviation clause:

"RECEIVED in apparent good order and condition from —— at the port of —— to be transported by the steamship —— with liberty to substitute (or tranship goods by) any other or succeeding steamer also with liberty either before or after proceeding towards the port of discharge to proceed to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route of said port of discharge) once or oftener, in

(Testimony of Erik Krag.)

any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), [344] or loading or discharging cargo or passengers, or for any purpose whatsoever." . . . .

In connection with the witness' testimony I offer in evidence this copy of the bill of lading.

(The document was marked Libelant's Exhibit 17.)

Q. Who drew that clause, do you know?

A. The French Line.

Q. And your bill of lading is used out of San Francisco for your ports of destination, and from European ports to San Francisco, is it not?

A. This bill of lading is used between this coast and Europe.

Q. Running both ways? A. No.

Q. Only outbound?

A. Only from this coast to Europe. There is a particular bill of lading, which happens to be in French, between Europe and this coast.

Q. It is written in French?

A. Yes. It is a different form than this.

Q. Do you know if there is a translation?

A. I know there is a translation.

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—Q. How many ships has the French Line operating? In other words, is it quite an extensive service, or has it just a couple of ships?

A. It is considered the largest service out of San Francisco to European ports.

(Testimony of Erik Krag.)

Q. How often do you have sailings?

A. Twice a month, or oftener.

Q. Mr. Mannon has talked about the relationship of this bill of lading with the advertisement which we have spoken about; would you or would you not consider that once this advertisement is in "The Guide," as you have seen it, it became a part of the contract, or could you take the bill of lading on its face as [345] it is?

The COURT.—I will sustain an objection to that question.

Mr. GRAHAM.—Q. Your attention has been called to the two different clauses in the bills of lading, one reading, in the Shipping Board bill of lading, and one reading as you have indicated in your own French Line bill of lading; can you or can you not give me the customary distinction, or is there any distinction in customary usage between those two clauses? Would the ship have the same right, or wouldn't it have the same right?

A. I don't see much difference in those two clauses; from my recollection of those clauses, I don't see that there is much difference between the two.

Q. You will note that there is a difference, the difference being that the words "or beyond" are added in your French Line bill of lading, and that they are not in the other bill of lading.

A. Yes, I notice that.

Q. Would it be customary to draw any distinction between those two clauses, as to the right of the

(Testimony of Erik Krag.)

ship to make this voyage which the "West Aleta" made? A. I would not say so.

Q. You would not say so? A. No.

Q. Do you know that the words "or beyond" appearing in that French Line bill of lading, do you know when they were put in; in other words, has it been recently, or have they been in there all the time?

A. I think it is about four months since that was put in there.

Q. You don't know for what purpose it was put in, do you?

A. No; it was by orders of the French line.

Recross-examination.

Mr. MANNON.—Q. Under your form of bill of lading, do you think your vessel has the right to pass a port with cargo and then come back to that port with the cargo? A. Yes. [346]

Q. Is that on account of the use of the words "or beyond" in your bill of lading? A. No.

Q. Is that what "or beyond" refers to?

A. No. I should imagine that "or beyond" would refer to a wider range of ports, say that we were going out of the usual range.

Q. So that if your ships, for instance, go to European ports, you would think that without the words "or beyond" in there your vessels could pass a port and come back to the port if it is within what you call the customary range? A. Yes.

Q. And then when you put in the words "or be-

(Testimony of Erik Krag.)

yond," that adds something beyond that that can be done by the ship? A. Yes.

Q. How far, under that form of bill of lading that you use, do you think you could go because of the words "or beyond"?

A. I would say, for instance, to Spanish ports. The reason for putting in the words "or beyond" was because we had certain cargo offerings for Spanish ports, which are south of the Hamburg-Bordeaux range. In order to show the shipper that we might go beyond that range, we found it proper to cover it in the bill of lading.

Q. So there is a definite distinction between bills of lading with the words "or beyond" in them and those that do not have those words in them?

A. I would not say that.

Q. Then you think it didn't make any difference, and that your ships could go to Spanish ports, without those words in there?

A. I think they did.

Q. You think they did? A. Yes, sir.

Q. But that was the reason for putting those words in there, "or beyond"? A. Yes.

Mr. GRAHAM.—Q. Have you ever had any dealings in the trans-Pacific trade? A. Yes.

Q. Do you know anything about Kobe, or Yokohama, or Hongkong, [347] what has been your experience as to ships calling in geographical order there? Would they call in or out of the geographical order?

A. It is about ten years since I was in that service, and so I cannot say definitely.

TESTIMONY OF E. B. WOLFF, FOR RESPONDENT.

E. B. WOLFF, called for respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated? A. I am in business for myself now.

Q. Who were you associated with in 1919 and 1920? A. Buck-Van Sicklen & Co., Inc.

Q. What was the nature of the business carried on by Buck-Van Slicken & Co.?

A. Importers and exporters.

Q. Where did you do most of your business, was it world-wide? A. World-wide.

Q. Did you or did you not do any European business at that time?

A. Very largely a European business.

Q. That was in 1919 and 1920? A. Yes.

Q. Were you or were you not shipping on Shipping Board vessels? A. We were.

Q. What were you shipping generally?

A. Flour and rice were the heaviest; also dried fruits and general merchandise. I would not know all the particulars, except outside of flour and rice, I know those things, because they were the heaviest; the general lines I did not know.

Q. What particular ports—continental?

A. Continental.

Q. Did you do any shipping to the U. K.?

A. Occasionally to London and Liverpool.

Q. I show you here a bill of lading which is in evidence in this case, it is the usual Shipping Board

(Testimony of E. B. Wolff.)

form bill of lading used in 1920 on ships from San Francisco. The steamship "West Aleta," [348] as you will note, sailed from San Francisco, and you will note that it says here, "From San Francisco to Cardiff, Wales." I will read you the usual deviation clause which appeared in this particular instance: "To touch at any port or ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff." I would like very much to have you tell the Court the customary interpretation of that clause in relation to the voyage which is advertised in "The Guide," here, of the steamship "West Aleta," from which you will note that it is advertised to Hamburg, Rotterdam and Cardiff, in that order.

Mr. MANNON.—I think first the witness should be asked to testify whether there was any customary interpretation of that clause.

Mr. GRAHAM.—Q. Do you know whether there was any customary interpretation in the shipping field of such a deviation clause?

A. I don't just understand what you mean.

Q. You are familiar with this bill of lading, aren't you?

A. Yes, I am familiar with it.

Q. In using this bill of lading, did you take occasion to read it? You know what is in it, don't you?

A. Yes. With reference to where I am shipping to, if that is what you mean?

(Testimony of E. B. Wolff.)

Q. Can you say whether there was any customary interpretation of this deviation clause, or not? A. In what way do you mean?

Q. How did the shipping world consider this clause?

The COURT.—He means with reference to deviation.

A. I don't consider it a deviation if they made their ports.

Mr. GRAHAM.—Q. What is their interpretation of that clause, how do they consider it?

A. That they have a right to go there, so long as they make the ports advertised they have a right to take them as they like. [349]

Q. Do I understand you to say that under that clause and that advertisement, the steamship "West Aleta" had the right to make that voyage in that order?

A. I would say they had the right to make it as the operators wanted to make it, so long as they made reasonable delivery of the cargo to the purchasers on the other side.

Q. I show you a copy of the manifest of the steamship "West Aleta" on that voyage, from which you will note that the firm of Beck, Van Sicklen & Co. shipped on the steamship "West Aleta" for Hamburg 1480 bags of rice; are you familiar with that shipment?

A. It would have passed through my hands simply as having been accepted or declined when the

(Testimony of E. B. Wolff.)

transaction was made; outside of that I would have nothing further to do with it.

Q. Did you or did you not actually ship on this Shipping Board bill of lading on the steamship "West Aleta" at that time? A. Undoubtedly.

Q. As to the routing of these vessels, I understand you said that you considered the ship could go on that particular route under those circumstances? A. Yes, sir.

Mr. MANNON.—I object to that as leading.

Mr. GRAHAM.—Well, he has already testified to that.

Mr. MANNON.—If he has, the question is not necessary.

Mr. GRAHAM.—That is all.

Cross-examination.

Mr. MANNON.—Q. Mr. Wolff, do you mean that the ship would have the right to go to those ports, Hamburg, Rotterdam and Cardiff in that order because of the clause in the bill of lading Mr. Graham just showed you?

A. I consider that the operators of a vessel have the right, unless they make a specific arrangement for direct shipment to a port, to call at their ports as they put it down in their advertisement, and to the best advantage [350] of the operators.

Q. That doesn't have anything to do with the deviation clauses that he showed you in the bill of lading, does it?

A. I don't consider that the deviation clause, so

(Testimony of E. B. Wolff.)

far as I am personally concerned, would cut any figure. When I know that a steamer is going to certain ports, unless I make special arrangements with the operators of that steamer, I expect her to go to ports as it suits them.

Q. And if there were not any deviation clause at all in the bill of lading, and they advertised the ship in that order, you think they had the right to go in that order, do you?

A. No, not in that order, but as they wished to. It doesn't follow that because they advertise Hamburg, Rotterdam and Amsterdam, that they have to go in that particular order, Hamburg, Rotterdam, Amsterdam. Unless you contract to make a special delivery, a direct delivery, then can go as they wish.

Q. Unless there is a special agreement with the ship to go to Hamburg first, and there is not any deviation clause at all in the bill of lading—

A. Then they have the right to go to the ports that they tell their shippers they are going to, and as it suits the operators of the vessel.

Q. Not because there is any deviation clause in the bill of lading, though?

A. I have never studied the deviation clause, but I consider that when an operator of the vessel says, "I am going to Liverpool, London, Antwerp, and there is no special arrangement made, she can go as she sees fit, that is, as the operator sees fit.

(Testimony of E. B. Wolff.)

Q. That is not because of what it says in the bill of lading at all?

A. That I cannot say. That may be or may not be. I am telling you what I personally consider myself. If I go to a [351] steamship company and I want freight delivered at a certain port and that vessel is on the berth for certain ports and I don't specify she has to go to the port I want to ship to direct, they have the right to go to the ports as they see fit.

Q. By "being on the berth," you mean advertised, don't you? A. Exactly.

Q. So if they advertise a ship for Hamburg first, for Rotterdam second, and for Cardiff third—

A. They don't say Hamburg first, they don't tell you that. They simply say they are going to make those ports; they say they have this vessel for those ports.

Q. They don't tell you what port she is going to first?

A. Not unless you make specific inquiry. *They* it is up to you. If they say, "You can't go to Hamburg direct," then you have to look for a vessel that goes to Hamburg first.

Q. But if they say Hamburg, Rotterdam, Cardiff.

A. It doesn't mean they are going in that rotation.

Q. It might mean they were going to Cardiff first?

A. It might mean they were going to any of

(Testimony of E. B. Wolff.)

them first, so long as they deliver their cargo within reasonable time they are within their rights. I have myself considered it so and never took any exception to it.

Q. And that has nothing to do with what is in the bill of lading at all?

A. That I couldn't tell you. I conduct my own business in my own way. There are so many technicalities that they put in the bills of lading that I conduct my own business to suit myself.

Q. You don't pay any attention to the deviation clause in the bill of lading, do you?

A. No, I don't.

Q. And the same way about an advertisement?

A. I never would rely on an advertisement to do my business. I consider it absolutely worthless. Anybody who would make a contract on an advertisement [352] in "The Guide" or any other newspaper, and without going to the operators, he would go broke.

Q. You would think he would have to go to the operators of the boat to find out where she is going?

A. Absolutely. I don't care where she is going. If I want cargo for a certain port I only want to know if she is going there, and within what reasonable time she will get there; outside of that I have nothing to do with it.

Q. And you are perfectly clear that in making space arrangements, people do not rely on the newspaper advertisements?

(Testimony of E. B. Wolff.)

A. Except to see that there is a steamer going to sail; for further particulars they go to the operator of the vessel.

Q. And the advertisement has nothing to do with the ports of call? A. I should not say so.

Q. And without any deviation clause at all in the bill of lading a ship can go to any port the operators want to send her to?

A. I should imagine so.

Q. You are perfectly clear on that, aren't you?

A. I am clear on it from my own standpoint.

Mr. GRAHAM.—Q. On this bill of lading you will note San Francisco to Cardiff; what would be the customary meaning of that, that she would have to go to Cardiff first, or that she would not?

Mr. MANNON.—This witness has been asked and answered those questions on direct examination and on cross-examination, and I don't think should be allowed to go over the matter again.

The COURT.—I think that is correct.

Mr. GRAHAM.—That is all.

(An adjournment was here taken until Friday, January 2, 1925, at ten o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [353]

Friday, January 2, 1925.

TESTIMONY OF W. J. LANE, FOR RESPONDENT.

W. J. LANE, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Lane? A. Guggenhime & Co.

(Testimony of W. J. Lane.)

Q. And with whom were you associated in 1919 and 1920? A. The same firm.

Q. What is your position in that firm?

A. Traffic manager.

Q. How long have you been with them?

A. Since 1918.

Q. In what general field of operations are Guggenhime & Co. trading?

A. They handle business to all parts of the world.

Q. Do they or do they not engage in the European trade? A. They do.

Q. Did they or did they not in 1919 and 1920?

A. Yes, sir, they did.

Q. I show you a manifest of the steamship "Effingham," and ask you if your firm made these shipments to the port of Liverpool, as indicated here? A. Yes.

Q. I show you a copy of an advertisement which appeared in "The Guide," marked Exhibit "E" in the stipulation of facts in this case, and ask you to read the schedule of the steamship "Effingham" as there advertised.

A. Steamship "Effingham," sails December 8, for Hamburg, London and Liverpool.

Q. Is that in or out of geographical order?

A. You mean in the rotation of ports of call?

Q. Yes.

A. It would be out of geographical order.

Q. Now, the same thing as to the steamship "West Aleta."

(Testimony of W. J. Lane.)

A. "West Aleta," sails late December, for Hamburg, Rotterdam, Cardiff.

Q. Is that in or out of geographical order?

A. That is out of [354] geographical order, but not the geographical order—

Q. It is out of the geographical order of ports of call as shown on the map, isn't it? A. Yes.

Q. I show you a copy of the Shipping Board bill of lading, Pacific form, with which we are now concerned in this case, and ask you if you are familiar with that form.

A. Yes, that is the same form that we have been using in our shipments at that time.

Q. Did you or did you not use that form in your shipments on the "Effingham"? A. Yes, we did.

Q. I will read to you this deviation clause which is under construction in this court, and ask you what is the customary interpretation from the point of view of a shipper actually using this bill of lading, engaged in that trade at that time: "To touch at any port or ports in any rotation or order, in or out of the geographical order, and to call at any port or ports more than once," bearing in mind the advertisement, what is the customary interpretation of that?

A. The customary interpretation of a shipper in our position is that we did not hold or did not expect the steamship company to make the ports of call as they might have stated or might have expected to; conditions might have arisen that warranted them changing that order of ports of

(Testimony of W. J. Lane.)

call, and, naturally, we did not expect them to hold to that at any particular time; the bill of lading had such latitude as would give them permission to change.

Q. In relation to this advertisement I have shown you, reading Hamburg, Rotterdam, Cardiff, would you or would you not have considered it customary for vessels to have made those ports in that order, under that clause?

A. The vessel would be expected to make the ports of call under the condition of the shipping news there, but if they deviated from that for any [355] reason of their own we felt that we would have no claim, or have any complaint against them.

Q. In other words, would you or would you not consider that the vessel was making a wrongful deviation if it went to these ports as I have read them to you?

Mr. MANNON.—We submit that this gentleman's interpretation cannot be binding here.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Would you consider that a customary right, from the point of view of the shipping public, would entitle the vessel to make these ports in this order: Hamburg, Rotterdam and Cardiff, under that clause? A. Yes.

Q. At that time did you subscribe to any shipping papers in San Francisco?

A. We have always subscribed to the Shipping News and the Shipping Register.

(Testimony of W. J. Lane.)

Q. By the "Shipping News," just what do you mean?

A. The "Daily Commercial News" and the Shipping Register."

Q. I show you a copy of "The Guide," and ask you did you or did you not subscribe to that paper at that time?

A. Yes; I refer to "The Guide" as the "Shipping Register."

Q. Then I am correct in understanding, am I, that by the "Shipping Register" you mean you subscribed to "The Guide"?

A. Yes, we subscribed to "The Guide."

Q. In finding out the route that a vessel would take, from the point of view of a shipper do you know what is customarily done where only the point of shipment and the port of destination are named in the bill of lading?

A. We referred to "The Guide" for that information.

Cross-examination.

Mr. MANNON.—Q. Mr. Graham read to you this deviation clause [356] which says to touch at any port or ports in any rotation or order, in or out of the customary route, and call at any port or ports more than once; that particular clause has been in very many bills of lading which you have handled, has it not? A. Yes.

Q. And it was in use in 1918, was it not?

A. Yes, sir.

(Testimony of W. J. Lane.)

Q. That particular clause is in use in bills of lading now, is it not?

A. That clause, or one to the same effect.

Q. That clause reads, "To touch at any port or ports"; what is the customary meaning of that, if any?

A. Our interpretation of that clause is that a vessel in a certain trade route, with a certain radius of ports to call at, that they didn't necessarily have to serve those ports in any rotation, but they could call at any port that they felt, any port that they saw fit to, in any order that they saw fit to.

Q. What is the meaning of this language, according to the custom that you are testifying about, "in or out of the customary route."

A. We take it that if there is a change in the same trade route that this vessel is operating in, they would have the same privilege of deviating out of that same trade route.

Q. So that your thought that the words, "to touch at any port or ports in any rotation or order," confined them in some way to the same customary route? A. Yes.

Q. And that these words, "in or out of the customary route," permitted them to touch at ports outside the customary route? A. Yes, sir.

Q. So that under this clause, the vessel is not really limited to any particular ports or trade routes? A. No.

Q. She could go to whatever ports, substantially,

(Testimony of W. J. Lane.)

she wanted to, if she had that clause in the bill of lading? A. Yes, sir.

Q. And substantially, if she had goods on board, she could take [357] the goods, then, whenever she wanted to, provided she had that clause in the bill of lading? A. Yes, sir.

Q. You were asked some questions about advertising, and I think you said that you had some goods on the "Effingham." A. Yes, sir.

Q. Mr. Graham showed you an advertisement from "The Guide"; I want to show you the one from the "Daily Commercial News"; this advertisement from the "Daily Commercial News," which is in as an exhibit to an agreed statement of facts here, says, "Steamship 'Effingham' for London, Liverpool and Hamburg sails December 6." What does that mean, under any custom you know of in advertising?

A. It usually indicates the rotation in which they expect to have the vessel call at those ports named.

Q. That is, if you see an advertisement like that in the "Daily Commercial News," you would expect that the vessel would go to London, Liverpool and Hamburg in that order?

A. In that order, yes.

Q. But suppose that after the vessel sailed from the port of San Francisco, say, and she had an advertisement outstanding like this, and she had a bill of lading with a clause in it like the one I read to you, and she got some cargo on the way over, say at San Pedro or somewhere else, for some other

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(Testimony of W. J. Lane.)

port, maybe a port like Danzig, could she go there, do you think, customarily?

A. Limited to that clause in the bill of lading she would have that privilege.

Q. It is the clause in the bill of lading that gives her the privilege, is it? A. Yes, sir.

Q. So that you really don't depend on the advertisement to know where the vessel is going with regard to the ports of call, because after she leaves San Francisco, and after the advertisements are all out of the papers, the ship owner or the common carrier [358] has the right to have the vessel go to some other ports than those advertised?

A. Yes; we have experienced that same thing.

Q. And that is very common, as a matter of fact, isn't it?

A. I would not say it is common, but it does happen occasionally.

Q. For instance, if a ship leaves San Francisco for Mediterranean ports, and she has half cargo, if she can, her practice is to pick up the rest of her cargo en route? A. Yes.

Q. And if she could make a fair rate, a rate that was attractive at San Pedro, or at the canal, or anywhere else along the line, she would do so?

A. Yes, sir.

Q. The advertisements would be all out of the papers by that time, wouldn't they? A. Yes, sir.

Q. And she would be regulated by the clause in the bill of lading Mr. Graham showed you, wouldn't she, as to where she was going? A. Yes, sir.

(Testimony of W. J. Lane.)

Q. You have been taking the "Daily Commercial News" and "The Guide" down there at your place ever since 1920, haven't you?

A. We have been taking "The Guide" right along.

Q. "The Guide" and the "Daily Commercial News"? A. Yes, sir.

Q. You take them right along down there at your place, don't you? A. Yes, sir.

Q. And you have ever since 1919, haven't you?

A. Yes, sir.

Q. I notice in this bill of lading the word "deviation" is used; what is "deviation"?

A. Deviation would be a clause there to give the steamship company the privilege of getting away from their stated practice of ports of call or routes within the meaning of that paragraph.

Q. And if they did not have any clause like that, would there be any obligation, without a deviating clause, on the ship to [359] go in any particular route, or any geographical order, do you think, if they advertised differently?

A. No, I don't think the advertising has any effect on what the terms of the bill of lading cover.

Q. The contract, you think, is in the bill of lading?

A. The contract is in the bill of lading, and the advertising is just matter of information.

Q. As a matter of fact, you observe a difference in the advertising with regard to the "Effingham" in "The Guide" and in the "Daily Commercial

(Testimony of W. J. Lane.)

News," do you not? Mr. Graham showed you one and I showed you the other. There is a difference; isn't there? A. Yes.

Q. You notice that difference, don't you?

A. Yes.

Q. So it is not the advertisement, at all, that counts, but it is the bill of lading?

A. It is the clause in the bill of lading.

Q. If they have that clause in the bill of lading, that the ship can go in or out of the customary routes, you think that would let her get away from her usual ports of call?

A. Yes, she could get away from it.

Q. Will you explain to the Court just how you use bills of lading in foreign shipments? You ship goods out of your house to European ports, don't you, with a draft against the bill of lading?

A. Yes.

Q. You will explain that custom to the Court?

A. You mean leading up to the issuance of the bill of lading, or from the time that the bill of lading is issued?

Q. After you get the bill of lading, what do you do with it? How do you collect for your goods?

A. After we get the bill of lading, we have drafts made up, together with a copy of the invoice, and we match those up together, each shipment by its [360] specific bill of lading, and those are tendered the bank here, and the bank here forwards them to its correspondents at the port the shipment is going to, and they, in turn, present the draft to the

(Testimony of W. J. Lane.)

buyer for his acceptance or approval, or whatever manner the shipment is sold in.

Q. Then what would they do with the bill of lading, if he pays the draft or accepts it?

A. The bill of lading after it reaches the bank, do you mean?

Q. Yes.

A. After the other man receives the bill of lading he is expected to turn that in to the steamship company in order to get his goods.

Q. What I was getting at was this: The goods go out with the draft and the bill of lading; then the buyer pays the draft and he gets the bill of lading, doesn't he? A. Yes, he gets the bill of lading.

Q. And the bill of lading represents the goods, so far as he is concerned? A. Yes, sir.

Q. He might even sell the bill of lading while the goods are afloat, might he not? A. Yes.

Q. You buy and sell, and you have bought and sold documents of that character, yourself, haven't you?

A. We have never resold. If the original bill of lading was not used at all, then that usually is recalled and a new one issued.

Q. The bill of lading is the last document as between the shipper and the common carrier, isn't it? A. Yes, sir.

Q. It contains a receipt for the goods, and the contract of carriage? A. Yes, sir.

Q. And that is the ordinary commercial language with regard to a bill of lading, isn't it? A. Yes.

(Testimony of W. J. Lane.)

Q. Bills of lading are practically universally used with regard to sea shipments, aren't they?

A. They are practically the same [361] on all lines.

Q. And, of course, a bill of lading has a great many clauses in it; this deviation clause that you had your attention called to here, you have seen a deviation clause used in bills of lading from ports in various parts of the world, haven't you?

A. In fact, most all the bills of lading have a deviation clause of some kind.

Q. But this particular one that was shown you, this Pacific form of the Emergency Fleet Corporation bill of lading, is used for the transit of goods out of San Francisco, say, to European ports, and from European ports accordingly back to San Francisco? A. Yes.

Q. That is their form, isn't it, and it is used in the Pacific trade to Oriental ports, too, isn't it, or do you know about that?

A. Oriental ports I am not familiar with, because we don't use the Shipping Board for Oriental ports. I don't know whether they had any service there at that time, or not.

Q. Have you had occasion to use the Shipping Board boats for any ports other than European ports? A. No.

Q. That is the only one? A. Yes.

Q. In the European trade, both going and coming, you have used this particular form of bill of lading, haven't you?

(Testimony of W. J. Lane.)

A. We have used them on the eastbound; we never had any west-bound business.

Q. Do you know whether they are used in the westbound business, or not?

A. I don't know for a fact, no.

Q. I wonder if you buy goods in Europe to come out here to San Francisco? A. No.

Q. So that your experience is limited to goods going from San Francisco to Europe?

A. Yes, sir.

Q. I think I asked you about that deviation clause. You have been in this business at least since 1918, and you saw that one [362] as early as that time, that form of bill of lading?

A. Yes, we used them at that time.

Q. You make cargo damage claims sometimes; are you conversant with cargo damage claims at all?

A. No. Cargo damage claims are usually filed by the buyer receiving the shipment. The goods are sold in most instances c. l. f.—cost, insurance and freight—and he files his claim for any damage to any of the shipment.

Q. By goods being sold c. i. f., you mean the draft goes out from here to the foreign bank, and there goes with it usually an insurance policy, an invoice representing the cost, and the bill of lading goes along; those are the documents that usually go, aren't they? A. Yes.

Q. And when you say "c. i. f.," that means "cost, insurance and freight"? A. Yes.

(Testimony of W. J. Lane.)

Q. Your business is usually done that way out of San Francisco, isn't it?

A. Our foreign business is.

Q. And those are what you coll c. i. f. sales, or "cif" sales? A. Yes.

Q. And, correspondingly, sometimes goods are sold out of San Francisco f. o. b. San Francisco, aren't they?

A. The domestic shipments are sold that way.

Q. And that means that the goods are put on the ship at San Francisco, under a contract like that?

A. The goods are put on the ship in any event.

Q. And then the responsibility, after the goods are on the ship, is entirely on the buyer, under an f. o. b. contract?

A. It depends on what point the goods are sold at. It might be New York, or it might be in San Francisco. If it is sold f. o. b. New York, the shipper has to resume any responsibility for damage between here and New York.

Q. And your sales are either c. i. f. sales or they are f. o. b. sales, [363] New York or San Francisco, or some other place, in accordance with your contract of sale? A. Yes, sir.

Q. Your contract of sale shows with great particularity matters of that character, doesn't it?

A. Yes; they are very particular in that respect.

Q. Take a ship like the "Effingham," what would you think her customary route was; have you any information on that?

(Testimony of W. J. Lane.)

A. Her customary route would be through the Panama Canal, and direct from there to Europe, touching at the ports she is expected to call at.

Q. So that when the bill of lading says that she is going to go in or out of her customary route, her customary route would mean that she was going to these European ports she expected to call at?

A. Yes, sir.

Q. And the bill of lading, giving her the privilege of calling out of her customary route, means that she can go to other ports? A. Yes, sir.

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—If your Honor please, I would like very much to put in the manifest of the "Effingham," merely to show what a very large shipper the firm of Guggenhime & Co. is on a ship which made practically the same voyage as the "West Aleta." The witness has already testified that they were larger shippers on this ship.

Mr. MANNON.—Guggenhimes are considerable shippers out of this port, if that is the admission counsel wants. I think that the manifest on another voyage is not admissible. I merely did not want to put it in the record. Perhaps my admission will meet counsel's wishes.

Mr. GRAHAM.—I would like to put it in the record. [364]

Mr. MANNON.—All right, let it go in the record.

(Testimony of W. J. Lane.)

The COURT.—Very well.

(The document was here marked Respondent's Exhibit "G.")

Mr. GRAHAM.—Q. You testified as to what would be the customary route; in relation to this European-Pacific service of Williams-Dimond at that time, and having seen this advertisement which you have seen, what would customarily be considered to be the customary route of vessels in that trade?

A. The route leading up to the first port of call would be the Panama Canal and direct from there to this first port; then the route from there on is usually taken from the shipping information at this end that the boat is going to touch those ports in the order named.

Q. That is, in the order named in the advertisement, or in some other order?

A. In the advertisement.

Q. Mr. Mannon has asked you as to your definition of the term "deviation"; what do you understand, or, rather, what is generally understood to be the right of the ship to take goods which she has on board in a particular trade or service, how far could she go?

Mr. MANNON.—I object to that unless it is confined to this bill of lading here.

Mr. GRAHAM.—All right, I will confine it to this bill of lading used in this European-Pacific trade.

A. Her deviation could cover considerable

(Testimony of W. J. Lane.)

change in the route, or the order of ports of call; they might just reverse the ports of call in the handling of the cargo; that is to say, instead of going to Hamburg first they might switch that around to the last port of call. There is nothing that binds the steamship company in that bill of lading clause, there, to touch these ports in the manner they expected to sail for. [365]

Q. You testified about "The Guide" and the "Commercial News"; do you know, from the shipper's point of view, whether it is customary to get the route of a vessel from "The Guide," or from the "Commercial News," or from either of them?

A. It is our practice to use "The Guide" entirely for that information.

Q. What do you use the "Daily Commercial News" for, if you use it at all?

A. We use it for getting information like reports from the Railroad Commission, and other information of that type.

Q. So that if there were two conflicting advertisements between the "Daily Commercial News" and "The Guide," customarily, what reliance would be given to one or the other?

A. "The Guide" seems to be the most reliable for that information.

Q. You have testified that the bill of lading represents the contract between the ship and the shipper. In this particular case I show you again this bill of lading, which indicates that the goods were shipped at San Francisco, and were to be de-

(Testimony of W. J. Lane.)

livered at Cardiff. What would the contract customarily be said to be in such a case as that?

Mr. MANNON.—Are you asking him now about the whole contract?

Mr. GRAHAM.—He has testified that the contract is represented by the bill of lading; I am asking him what would be the customary interpretation of that contract.

Mr. MANNON.—I submit, if the Court please, that this witness cannot interpret the contract.

The COURT.—Objection sustained.

Mr. GRAHAM.—Your Honor, the witness has already testified that he is familiar with these bills of lading, that he has used them, that they have been used for a great many years, and that they represent the contract.

The COURT.—They do.

Mr. GRAHAM.—It seems to me that the case here is, what is [366] the interpretation of this contract as a commercial document? We are trying to show that the words "San Francisco to Cardiff" do not necessarily mean San Francisco to Cardiff direct, but that they might mean another route.

The COURT.—He has testified to what the custom is with reference to these matters. As I understand his testimony, that question is covered.

Mr. GRAHAM.—I do not believe, your Honor, he has testified to this.

The COURT.—Not as to those two points?

Mr. GRAHAM.—I am merely trying to get be-

(Testimony of W. J. Lane.)

fore the Court that a customary interpretation of this bill of lading is not to carry the goods from San Francisco direct to Cardiff, or direct to Hamburg, or direct to Rotterdam, as the case might be, but to—

The COURT.—He has so testified.

Mr. GRAHAM.—You say he has testified to that?

The COURT.—I understand he has.

Mr. GRAHAM.—Then that is all.

Recross-examination.

Mr. MANNON.—Q. I want to be perfectly clear about the bill of lading with you, Mr. Lane. I understand that entirely irrespective of what you see in the newspapers in the way of advertising, the vessel, after she leaves San Francisco, and after the bill of lading is issued, and after the advertisements have all stopped, might pick up cargo for some other ports than those mentioned in the bill of lading, or in the advertisements?

A. That is possible, yes.

Q. And that is customarily done where the vessel leaves San Francisco without a full cargo, that is, leaves with space, and goes to a port where she can get some more cargo?

A. Yes. [367]

Q. So that the advertisements, then, are not the things that tell you where a ship is going out of San Francisco necessarily?

A. Well, they tell you the points they are going to touch, but they don't necessarily mean that

(Testimony of W. J. Lane.)

the vessel would touch those ports in the order named in the shipping information.

The COURT.—Q. Or touch only those ports.

A. Or touch only those ports; she could touch at more.

Q. As you understand it, it tells you the ports she will touch?

A. The ports she will touch, and she may touch others.

Mr. MANNON.—Q. At any rate, if the advertisement says the vessel is going to Hamburg, Rotterdam and Cardiff, it does not mean necessarily that she will touch them in that order?

A. We take it as a matter of information that she will touch in that order, but she may deviate from that order.

Q. And you take it that under the bill of lading she has that right? A. Yes.

Q. So that in this case she might go to Hamburg, Rotterdam or Cardiff first? A. Yes.

Q. Or she might go to any one of those second?

A. Yes.

Q. Or she might go to any one of the three third? A. Yes.

Q. And she might add the port of Copenhagen?

A. She might touch at another port in the vicinity.

Q. And she might touch at a port like Danzig, in the Baltic? A. Yes, that is possible.

Q. Or she might add some Spanish ports, possibly?

(Testimony of W. J. Lane.)

A. It is very unusual that they ever go that far south.

Q. Or she might go to any Irish ports?

A. Yes.

Q. Do I understand your testimony to be that where this European Pacific Line was being advertised by Williams, Dimond & Co. in the "Daily Commercial News," that you would not regard those advertisements as accurate?

A. Well, they are accurate to a certain [368] extent, but it is possible that they may be in error at some time or other. We have found that there have been errors in their advertisements, but they usually correct it as soon as they know of it.

Q. It is the fact, then, is it not, that advertisements in "The Guide" are not accurate with regard to where ships are going, necessarily?

A. They are about as close as you can get to being an accurate paper.

Q. You have been testifying about this European-Pacific service, and also with regard to advertisements in "The Guide." I understand, for instance, that the advertising of this ship, the "West Aleta," read to Copenhagen right up to her date of sailing, on her earlier trip, whereas the ship, in fact, went to Hull and to Hamburg; are you conversant with anything of that sort?

A. Yes. When they place a boat on the berth for loading, they make it as broad as they possibly can for ports for which they would like to

(Testimony of W. J. Lane.)

receive cargo; after the boat is on berth for a certain length of time, if there is not sufficient cargo to ports that they expect, in order to make it profitable for them to touch at that port, they will eliminate the port that has the lightest cargo; for instance, if this boat was put on for Copenhagen, and the Copenhagen cargo did not come in in the volume they expected, they would cancel that port of call and just handle the other ports.

Q. And it would not make any difference about where the ship was going, whether she advertised she was going to Copenhagen, or not?

A. No.

Q. That would not affect the matter?

A. The advertisement would not hold them to making that port. [369]

Mr. GRAHAM.—Does your Honor want any more evidence in relation to the custom out of San Francisco and out of Pacific Coast ports to make ports of discharge in other than their geographical order in other services? I mentioned the other day the possibility of showing to your Honor that it was the custom to go in other than geographical order, not only in the European-Pacific service, in the intercoastal service, which Mr. Chandler testified to and gave a very graphic description of having called at Boston, New Brunswick, and then Baltimore—but also in the trans-Pacific trade. If your Honor please, I believe that I can show your Honor that it is also the custom with at least one line on the Pacific

Coast here, in the coastwise trade, to do the same thing, to go in other than geographical order. Does your Honor want to hear any evidence on that point?

The COURT.—No, I don't.

Mr. GRAHAM.—I would like to read into the record what I propose to prove by Mr. Perry Newcombe, of Dodwell & Co., the local agent for the Canadian Government Merchant Marine, Ltd.; and in this respect put into evidence the bill of lading which they use, which carries a customary deviation clause, to call at any port or ports in any order, for any purpose. In this respect we believe that Mr. Newcombe will testify that vessels of the Canadian Government Merchant Marine Line sail from Ocean Falls, north of Vancouver, with paper, which is bulky and bears the same stowage as wine would ordinarily bear; this cargo is on a bill of lading consigned from Ocean Falls to San Francisco; the vessel, in fact, comes from Ocean Falls to San Pedro, and then returns to San Francisco, after having gone by San Francisco, and unloads its cargo in San Francisco or in Oakland. He would further testify that the distance is approximately 500 miles [370] each way, which is approximately the same distance the "West Aleta" made. This is just to show your Honor that this is also the custom in the coastwise trade. I introduce in evidence the Canadian Government Merchant Marine, Ltd., bill of lading as Respondent's Exhibit "H." Mr.

(Testimony of E. B. Stewart.)

Newcombe would further testify that this bill of lading which this country uses has not the words "or beyond" in it, and yet they do what I have just stated for the record.

TESTIMONY OF E. B. STEWART, FOR RESPONDENT.

E. B. STEWART, called for respondent, sworn.

Mr. GRAHAM.—Q. Mr. Stewart, with whom are you associated? A. Leon Israel & Bro.

Q. With whom were you associated in 1919 and 1920? A. The same firm.

Q. What is your position in that firm?

A. Office manager.

Q. Does that firm engage in the export trade from San Francisco to Europe? A. It does.

Q. Did it or did it not at that time?

A. It did.

Q. Have you or have you not had any experience with shipping on vessels in the European-Pacific service? A. I have.

Q. Did you or did you not ship on the steamship "Effingham" leaving San Francisco in December, 1919? A. We did.

Q. I show you, Mr. Stewart, an advertisement which is in the stipulation of facts; it is about the steamship "Effingham," of the European-Pacific Line; you will note that this schedule for the "Effingham" gives London and Liverpool. Do you remember where you had cargo destined for on the "Effingham"? A. Liverpool.

(Testimony of E. B. Stewart.)

Q. That is for the last port as indicated in the advertisement? A. Yes, sir.

Q. Are you familiar with the ordinary Pacific form of the Shipping Board bill of lading which I show you? A. Yes. [371]

Q. I read to you the deviation clause in that bill of lading:

> "To touch at any port or ports, in any rotation or order, in *our* out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff"—

and ask you as a shipper what is the customary interpretation of that clause in relation to the voyage of the steamship "West Aleta," which it is stipulated was as advertised to the ports of Hamburg, Rotterdam and Cardiff.

A. It would be my understanding that the steamer could go to any of those ports, either first, or return to them on her regular journey.

Q. Is it or is it not the customary understanding of the shipping public in San Francisco that the vessel could go past, say, the port of Cardiff and to Hamburg, and then back to Cardiff and discharge Cardiff cargo?

A. It is my understanding that she could.

Q. Do you subscribe to any shipping papers in San Francisco?

A. Yes, we subscribe to "The Guide."

Q. Do you subscribe to any other?

A. We did subscribe to the "Commercial News."

Q. In 1919 and 1920? A. Yes.

(Testimony of E. B. Stewart.)

Q. What do you subscribe to "The Guide" for?

A. For information in shipping.

Q. What did you subscribe to the "Daily Commercial News" for?

A. Practically for the same thing.

Q. In case you had a bill of lading which read as this does, San Francisco to Cardiff, how would you find out what the route of that vessel was going to be, if you wanted to know?

A. From "The Guide."

Q. In case there were two conflicting advertisements, as there were in the case of the "West Aleta," one in the "Daily Commercial News" and in the other "The Guide"—I will read to you the advertisement in the "Daily Commercial News" as to the "Effingham": [372] "For London, Liverpool and Hamburg," and in "The Guide," "Hamburg, London and Liverpool"; what would be the custom relative to the reliance of the shipping trade in those two advertisements?

A. We always found "The Guide" very accurate, but in a case of that kind I would take the matter up with the steamship agents.

Q. Would you or wouldn't you feel that the burden was on you as a shipper?

A. I would think that the burden was on the shipper to obtain his information.

Q. In this European-Pacific trade, Mr. Stewart, what is the customary understanding of the limits of that trade, the range; is it confined to any particular range, or do you know.

(Testimony of E. B. Stewart.)

A. I don't know.

Q. You don't know that? A. No, sir.

Q. Do you know or did you ever hear of the Hamburg-Bordeaux range?

A. Yes, I have heard of it.

Q. What does that mean?

Mr. MANNON.—If your Honor please, the witness testified he does not know about this trade, so we object to this evidence as incompetent.

Mr. GRAHAM.—I think, your Honor, the witness knows about the trade. He has been in this European-Pacific trade for some time. I merely am asking him if he knows the range that the European-Pacific trade covers.

Mr. MANNON.—I will withdraw the objection before counsel tells the witness further.

The COURT.—Very well, proceed.

A. That is a shipping circle or route in which these steamers call at various ports of trade.

Mr. GRAHAM.—Q. Are you familiar with a bill of lading which, [373] in addition to the clause I have read you, has in it the words to call at any port or places whatsoever, or out of or beyond the route of said port of discharge?

A. Yes, I have seen bills of lading that way.

Q. Is it customary to draw any distinction between these two forms of bills of lading, that you know of?

The COURT.—I don't think that question is proper. You are asking him what is the customary understanding. I do not think that evidence

(Testimony of E. B. Stewart.)

is admissible. What is done, what is the custom under these bills of lading, is admissible.

Mr. GRAHAM.—I will alter the form of my question, your Honor.

Q. Taking these two forms as I have read them, what is customarily done in shipping out of San Francisco, do you know, or is there any customary difference in the rights of the ship?

A. I don't quite understand the question.

Q. You appreciate that there are two different forms. I show you here a French line form which reads, in addition to the deviation clause which I have already quoted to you, "Or beyond"; what is the customary interpretation in the shipping trade of those two documents?

A. I would understand a bill of lading that included the clause "and/or beyond" to permit the steamer to go out of its usual trade course or its trade route.

The COURT.—If I find that I am not bound by the terms of the bill of lading, and that the terms are doubtful and that, therefore, I may resort to custom to reach a proper interpretation of the construction of these terms, this testimony would be of no service to me. It is his construction, a layman's construction. He is not telling me what is done by the trade where these bills of lading are in use.

Mr. GRAHAM.—I want it correctly in the record, your Honor, [374] so that it will not be thrown out. I am trying to obtain his idea of the

(Testimony of E. B. Stewart.)

differentiation in a bill of lading having the words "or beyond"—

The COURT.—His interpretation is of no service.

Mr. GRAHAM.—The interpretation of the trade which he represents.

The COURT.—I don't think that is admissible. We want the custom; we don't want what his interpretation of it is.

Mr. GRAHAM.—That is all

Cross-examination.

Mr. MANNON.—Q. Leon, Israel & Co. are a San Francisco import and export house?

A. They are a New York house, with an office in San Francisco.

Q. But they have an office here in San Francisco, haven't they? A. Oh, yes.

Q. And they handle goods to European ports?

A. Yes.

Q. In 1919 and 1920, they were handling goods for Oriental ports, also, weren't they? A. Yes.

Q. And they were extensively in the rice trade at that time, weren't they?

A. We are in the general importing and exporting business.

Q. So that your business was one that in 1919 and 1920, and right up to date, has had to do with European ports, with Oriental ports, and with Australian ports?

A. In the last few years I have had no Oriental business—we have had no Oriental business.

(Testimony of E. B. Stewart.)

Q. But at least until after January of 1920, you were very extensively in the Oriental business, weren't you, in the rice business?

A. Yes, up to 1920 we handled considerable rice.

Q. When was it that you quit handling rice?

A. I think about 1921.

,Q. During that perifod, have you had any South American business, [375] with South American ports?

A. Yes, I have had considerable business.

Q. I don't suppose you have had any African business?

A. Not that I recall offhand; no.

Q. And in all this extensive business you have had, you have had occasion to use bills of lading. of course, have you not? A. Oh, yes.

Q. And in regard to every shipment you use a bill of lading, don't you? A. Yes.

Q. The bill of lading is the receipt for the goods and the contract for their carriage, isn't it?

A. Yes, sir.

Q. And the bill of lading is always the thing that you look to see what the contract of carriage is, isn't it? A. Yes.

Q. You are thoroughly familiar with this method of doing business, whereby the bill of lading goes through the bank in the town or in the city where the shipper is, with a draft, and with some other documents to the place of destination, where the bill of lading is taken up, the draft is paid, and the bill of lading then delivered? A. Yes, sir.

(Testimony of E. B. Stewart.)

Q. You are conversant with that, aren't you?

A. I am, yes.

Q. What other papers are sent forth?

A. Consular invoice, commercial invoice.

Q. Anything else?

A. On certain commodities, weight certificates.

Q. And certificates of inspection?

A. Inspection certificates.

Q. That is, weight, quality and condititon certificates? A. Yes.

Q. Anything else?

A. I don't recall now. It all depends on certain parts of the country; some countries require more data and information than other countries require. Ordinarily, the draft attached to the bill of lading, the marine insurance certificate, and the quality certificate are sufficient. [376]

Q. And those are the things that Leon, Israel & Co. have practically always sent during all the time that you have been with them?

A. Yes, we support all drafts with proper documents to different countries.

Q. And the documents you send are the documents you just told me about? A. Yes, sir.

Q. You buy goods that way sometimes, too, don't you? A. Yes, sir.

Q. And when you buy goods at San Francisco, or to be delivered to the port of San Francisco, from whatever point in the world they are coming, you get substantially the same papers, do you not?

A. Yes, sir.

(Testimony of E. B. Stewart.)

Q. In other words, these maritime documents and maritime methods of doing business extend all over the world; that is correct, isn't it? A. Yes.

Q. And these bills of lading that you have been asked about are bills of lading that are in use all over the world, aren't they?

A. I understand they are, yes.

Q. Let me be certain that you know of these things of your own knowledge. Do you handle them down there in your business? A. Yes, sir.

Q. You are a man, then, who is conversant with this sort of thing, aren't you? A. Yes, sir.

Q. So that you know that in shipments by water there is practically always a bill of lading?

A. Yes, sir.

Q. And the bill of lading is the contract of carriage that is looked to if there are any cargo damage claims? A. Yes, sir.

Q. You know that of your own knowledge, don't you? A. Yes, sir.

Q. When you want to find out what rights the ship has and what rights the shipper has, you look at your bill of lading, don't you?

A. Yes, sir. [377]

Q. Have you had occasion to do that many times, yourself? A. Yes, sir.

Q. You have made many cargo damage claims, haven't you? A. Yes, sir.

Q. And when you make them, and questions arise between you and the ship, you look at the clauses in

(Testimony of E. B. Stewart.)

the bill of lading to see what the ship has the right to do? A. Yes, sir.

Q. And that applies to Seattle, and to San Francisco, and to all the Pacific Coast ports, doesn't it?

A. Yes, sir.

Q. And it applies to Hongkong, Kobe, and all the Oriental ports, doesn't it? A. Yes, sir.

Q. And it applies to this European-Pacific service we have been speaking of, Danzig, Falmouth, Hamburg, Cardiff, and Rotterdam, so far as you know? A. So far as I know, yes.

Q. Well, you know that it does, don't you?

A. Yes, sir.

Q. And it applies to all the Mediterranean ports that you are conversant with, doesn't it?

A. Yes, sir.

Q. So that this particular form of bill of lading is in use for shipments from San Francisco to all ports in the world, during the time you have been in business, isn't it? A. Yes, sir.

Q. And, likewise, the same form of bill of lading has been in use for shipments from all parts of the world to San Francisco, has it not?

A. Yes, sir, I believe it has.

Q. You know that in handling the bills of lading in your business, don't you?

A. I don't recall any shipments arriving for our account on that particular bill of lading. Most of our shipments came in on bills of lading other than that one. We used that bill of lading for outbound

(Testimony of E. B. Stewart.)

purposes but I do not recall any shipments coming in on that bill of lading.

Q. But you do know that the Shipping Board vessels all use that form? A. Yes.

Q. And other ships use substantially the same?

A. Practically the same. [378]

Q. Some use different forms; that is correct, isn't it? A. Yes.

Q. With regard to this so-called "liberty-to-call" clause, the deviation clause that is in this Pacific form of Emergency Fleet Corporation bill of lading, which reads, "and to touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, that particular clause, or one almost identical with it, has been in very many bills of lading that you personally have handled ever since you have been in business?

A. Yes, they all carry certain clauses.

Q. I wanted to find out if this particular one, if you know, has been.

A. I don't recall whether it is identical, or not, but they all carry similar clauses.

Q. Then you do not compare them closely enough to see what they do mean?

A. No, we don't compare them very closely; we understand generally what they are, but we don't compare them.

Q. Have you ever had occasion, on cargo damage claims, to find out exactly what they mean?

A. We have had considerable cargo damage

(Testimony of E. B. Stewart.)

claims, but I don't recall that we ever had any controversy over the bill of lading.

Q. Who handles the cargo-damage claims down in your concern? A. I do.

Q. And you have never used the bill of lading in determining what your rights were in a cargo-damage claim?

A. We have used the bill of lading in support of our claim, yes.

Q. Have you ever had any argument about the bill of lading in order to determine those matters?

A. No, sir.

Q. Your construction was always taken as correct, was it?

A. There was no question about our construction.

Q. There never has been any question made about any construction [379] you have put on the bill of lading?

A. No, we have had no question about our bill of lading.

Q. No one has ever questioned any construction you put on the bill of lading?

A. I don't recall that there was ever any question about it.

Q. You are perfectly clear on that, aren't you?

A. I think I am, yes.

Q. This bill of lading uses the word "deviate" in this clause: "The vessel shall have liberty to deviate for the purpose of making trial trips," etc. Do you know anything about the meaning of that term "deviate"?

(Testimony of E. B. Stewart.)

A. I know what the word "deviate" means.

Q. I mean with regard to shipping generally. Are you clear that you know about that?

A. I think I do, yes.

Q. Please state it.

A. It would give the steamer the privilege of going out of her certain routes, or to other countries.

Q. For instance, if it were headed for England on a customary route, as you say, she might go to Mediterranean ports, if she had a deviation clause?

A. That I could not say.

Q. Could she go to African ports, do you think?

A. I don't think so.

Q. Why not?

A. Well, they usually have their certain trade routes, and certain places, and they usually stay in that vicinity.

Q. In this bill of lading clause here it says: "A vessel shall have the right to touch at any port or ports"; does that mean any port or ports?

A. In her trade route, I would understand that to mean.

Q. It is limited to her trade route?

A. To her trade route I would think.

Q. It says, "in any rotation or order, in or out of her customary route." Does that mean in or out of her customary trade route?

A. No, I don't think it does.

Q. It says, "out of her customary trade route"; doesn't that [380] affect your mind at all, where

(Testimony of E. B. Stewart.)

it says that a vessel can go out of the customary route?

A. That clause might permit the steamer to go out of her way some short distance and pick up certain cargo, or to discharge certain cargo, that might not be exactly in line of her regular route; I would think she could.

Q. She could go out of her customary route, then? A. I think so, yes.

Q. Could she, for instance, take cargo through mine fields, do you think, if there were mine fields planted as the result of the war?

A. Well, it all depends.

Q. What does it depend on?

A. On her route, I would understand. If there were mine fields in her route, she could probably take cargo through them.

Q. And if those mine fields were on her customary route, she could take her cargo through them?

A. If there were mine fields on her route she could take her cargo through.

Q. And whatever the order of ports of call might be that were advertised, that would not make any difference, would it?

A. Not with the bill of lading clause that gave her the privilege of going from port to port.

Q. So that if a vessel were advertised for Cardiff and Rotterdam, that would mean that she might go either to Rotterdam first, or to Cardiff first, might it not? A. I think so, yes.

Q. And so, if she were advertised only for Car-

(Testimony of E. B. Stewart.)

diff and Rotterdam, if she wanted to she could go to Hamburg? A. Yes, sir.

Q. And if she were only advertised for Cardiff, she could go to Copenhagen, if she wanted to?

A. I think so, if she were in that trade route.

Q. And if she were advertised for Cardiff, she could take cargo to Danzig and then go back to Cardiff if she wanted to?

A. I would think so, if that were in her trade route. [381]

Q. Would it make any difference if it were in her trade route, or not, if she has the clause to go in or out of the customary route?

A. I think she could go out of her route.

Q. She could go out of her customary route, if she had this clause in the bill of lading?

A. Yes, sir.

Q. Supposing she didn't have any clause like this deviation clause I have read to you in her bill of lading, and she was advertised for Hamburg, Rotterdam and Cardiff, could she go to any one of those, without this clause that I have read to you, in or out of the customary route, and to call at any port or ports more than once?

A. And what was the question?

Mr. MANNON.—Mr. Reporter, read the question.

(Question read by the reporter.)

A. She would certainly have the clause in her bill of lading.

Q. What I am trying to get at is whether the

(Testimony of E. B. Stewart.)

clause in the bill of lading is the important thing, or not. Suppose she did not have any clause at all like the one I have read to you in the bill of lading, and she advertised she was going to Hamburg, Rotterdam and Cardiff, would you understand under this custom you are speaking about that she could go, say, to Cardiff first?

A. If she was advertised to go to Hamburg, Rotterdam and Cardiff?

Q. Yes.

A. I would understand that she could go to those three ports, if she was advertised and that was her special trip or special sailing; I would not understand she would make other side trips, if she did not have a deviation clause in her bill of lading.

Q. And you would understand she could go without any deviation clause in the bill of lading to any of those ports in any order?

A. Yes, sir.

Q. She could go to Hamburg first?

A. Yes, sir. [382]

Q. Or she could go to Rotterdam first?

A. Yes, sir.

Q. Or she could go to Cardiff first?

A. Yes, sir.

Q. Could she go to Copenhagen, without any deviation clause, on a trip like that?

A. If she was advertised and scheduled to make those three ports, and without any clauses in her bill of lading I don't think she could take off

(Testimony of E. B. Stewart.)

trips to various other ports. I am not prepared to say whether they do, or not. I don't imagine that they would.

Q. Of course, that is all imagination, and not customary, and your own interpretation?

A. Well, I am speaking from experience.

Q. The experience you speak of is the negotiations that you have had? A. Yes, sir.

Q. You have never had any experience with a bill of lading that did not have a deviation clause in it, did you? A. I don't recall.

Q. You never have seen one that didn't have a deviation clause in it, did you?

A. I don't recall.

Q. On the other hand, if the deviation clause is in the bill of lading, and if there is certain advertisement in one newspaper that says, "This vessel is going to Cardiff and Rotterdam," and another newspaper advertisement says the vessel is going to Hamburg, Rotterdam and Cardiff, you could not tell from the advertisement where the vessel was going, could you?

A. It would be up to me to find out where she was going.

Q. Then you would go and ask the ship agents?

A. Well, yes, I would communicate with the steamer's agents.

Q. If they told you what ports they were going to, that would not affect your mind as to the order she would go, would it, if she had a deviation clause? A. No, it would not.

(Testimony of E. B. Stewart.)

Q. It would be the deviation clause, it would not be the advertisement?

A. The advertisement is usually a matter of information where the steamer is going, so you can book your cargo. However, [383] if she did not go directly to the first port mentioned, I think she would have a right to go elsewhere and—

Q. Just a minute. What I wanted to find out about was where advertisements are conflicting, like they were on the "Effingham," you don't expect those advertisements to be any part of your contract of carriage that is in the bill of lading, do you?

A. The contract of carriage is in the bill of lading.

Q. And then what the ship owner or the ship agents may tell you is not the contract—the contract is in the bill of lading, isn't it?

A. The contract is the bill of lading.

Q. That is the thing you buy and sell all the time, isn't it?

A. The bill of lading, yes.

Q. And that is done in ports all over the world, isn't it? A. Yes.

Q. You know that to be the fact, don't you?

A. Yes.

Q. You have been asked some questions about the Hamburg-Bordeaux range in this European-Pacific service, and in this European-Pacific line; as a matter of fact, in that Hamburg-Bordeaux range you would have to know what was within

(Testimony of E. B. Stewart.)

that range; for instance, you would have to know whether Danzig was in it; would you say that Danzig was in the Hamburg-Bordeaux range?

A. I couldn't say.

Q. You don't know? A. No.

Q. As a matter of fact, you would not know whether Barcelona was in it, would you?

A. I would say that Barcelona would not be in that range.

Q. Why is it you say that Baltic ports, like Danzig, are in the European-Pacific range, whereas Mediterranean ports are not?

A. That is out of the trade line.

Q. As a matter of fact, some people have testified here that these ships sometimes went to Spanish ports: Is that right?

A. I don't know. [384]

Q. You can't testify about that, can you?

A. No.

Q. You don't know whether they are right or wrong?

A. I don't know whether they are right or wrong.

Q. So you can testify to anything about the Hamburg-Bordeaux range?

A. All that I know is that that was a trade route that these steamers were engaged in, that certain particular route; I am not familiar with every port that they touched on in that route.

Q. You don't know whether that would include ports in the Baltic sea, or not?

A. No, I do not.

(Testimony of E. B. Stewart.)

Q. You don't know whether it would include Spanish ports in it?

A. I would not imagine it would, though I don't know.

Q. There is not any fixed custom about that that you can testify to, is there?

A. As I understand it, when a steamer is in a certain service, she has a certain range of ports.

Q. And this Hamburg-Bordeaux range, there isn't any custom about that, is there, whether it includes Danzig or not? A. I don't know.

Q. You don't know that, do you? A. No.

Q. And there isn't any custom as to whether it includes Spanish ports? A. I don't know.

Q. So you cannot testify about any custom as regards the Hamburg-Bordeaux range, including Spanish ports, or Baltic ports, or not? A. No.

Redirect Examination.

Mr. GRAHAM.—Q. Mr. Stewart, going back to the route and the custom of vessels in that particular service at that time, what was customarily done by the shipping public, shipping under these bills of lading with that clause, and in that service, did they ship on vessels going in or out of the geographical order, or didn't they?

A. You mean if cargo was consigned to a particular port? [385]

Q. Yes. Take your case, the "Effingham": Was that the customary practice, or wasn't it?

A. Yes, it was customary.

Q. Mr. Mannon asked you some questions about

(Testimony of E. B. Stewart.)

claims; are you or are you not insured against cargo loss? A. We are.

Mr. MANNON.—I submit that that is immaterial.

The COURT.—I think so. Objection sustained.

Mr. GRAHAM.—That is all.

Recross-examination.

Mr. MANNON.—Q. With regard to your own cargo on the "Effingham," where was your cargo destined for? A. Liverpool.

Q. Out of San Francisco?

A. From San Francisco to Liverpool.

Q. Suppose that cargo had been lost after the ship passed Liverpool, without stopping there, and while she was entering the port of Danzig in the Baltic, would there have been any custom for you to make a claim for that against anybody, or not?

A. We would make a claim against the insurance company.

Q. Do you know whether there has been any custom for the insurance company to make any claim against the ship, or not? A. I don't know.

Q. You don't know? A. No.

Q. In other words, your recourse, if you are insured, is against the insurance company?

A. Yes, if it is an insurance loss.

Q. And you don't take such a claim up with the carrier, at all, yourself?

A. We always notify both carrier and insurance company in case of claim.

(Testimony of E. B. Stewart.)

Q. But your negotiations are with the insurance company? A. Yes, sir.

Q. Not with the carrier? A. No.

Q. You do your collecting from the insurance company? A. Yes.

Q. You don't know whether there is any custom for the insurance [386] company to collect from the carrier in the case I mention, or not?

A. No, I do not.

Q. You don't know that? A. No.

Q. There is not any custom, then, so far as you know: That is right, isn't it? A. Yes.

Q. You don't know whether there is any difference between your insurance policy and your bill of lading?

A. Yes, there is quite a difference between the two. A marine insurance policy is simply a protection to your shipment. The bill of lading is a contract with the steamship company to carry your shipment.

Q. So that you would not be able to say whether there was any custom at all about making a claim against the common carrier, where you ship your goods out of this port, say, for Liverpool, and the vessel had been lost as she was entering Danzig?

A. I would make my claim against the insurance company.

Q. You don't know whether there is any custom for anybody to make a claim, or not to make a claim against the common carrier, the ship owner?

(Testimony of E. B. Stewart.)

A. We have had claims against the ship owners.

Q. In a case of that kind, would you or would you not, yourself, make a claim?

A. I would make the claim against the insurance company.

Q. And if you had not been insured, you would make the claim against the ship owner?

A. As I understand it, the insurance policy would cover the loss.

Q. But if you had not been insured, you would make the claim against the ship owner?

A. I would have been insured.

Q. You would have made claims, where you were not insured?

A. Not for marine damage, but insurance damage.

Q. So you don't know what you would have done if you had not been insured?

A. Where we have advice that a claim is necessary [387] we communicate with all concerned, so there will be no mistake about the filing of the claim.

Q. And your reliance is entirely on the insurance company?

A. If it is an insurance damage.

Q. And you expect these deviation damages to be insurance damages? A. Yes.

Q. And there is not any custom on your part to waive anything against the insurance companies, at all, is there?

(Testimony of E. B. Stewart.)

A. Not if I am properly protected by an insurance policy, no.

Mr. GRAHAM.—Q. In case you are protected in your insurance from a deviation and the vessel, with your cargo, instead of going to Cardiff, went to Hamburg, would the insurance company pay you, or wouldn't they?

Mr. MANNON.—I object to that as immaterial.

Mr. GRAHAM.—Mr. Mannon has gone rather deeply into the question whether the insurance company would or would not do a particular thing. I am merely trying to find out whether the insurance company would pay this particular amount, or not.

The COURT.—Objection sustained.

Mr. GRAHAM.—In this case it is in the stipulation of facts that the insurance company is the real party in interest; it is not in the stipulation as the real party in interest, but it is indicated in the statement that the insurance companies paid the loss. I would like to have the witness testify how those payments are made.

Mr. MANNON.—And it is also a fact, is it not, Mr. Graham, that this particular ship was insured against deviation? It was so insured in the American Club.

Mr. GRAHAM.—I don't know whether that is the fact, or not, Mr. Mannon; I really don't know. [388]

Mr. MANNON.—That is the fact. We will state that as the fact.

(Testimony of William J. Murray.)

The COURT.—I will sustain the objection.

Mr. GRAHAM.—That is all.

TESTIMONY OF WILLIAM J. MURRAY, FOR RESPONDENT.

WILLIAM J. MURRAY, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Murray?

A. The California Steamship Company.

Q. With whom were you associated in 1919 and 1920?

A. In 1919 and 1920 I was a marine surveyor.

Q. Did you or did you not survey vessels operated by Williams, Dimond? A. Yes, I did.

Q. I show you a copy of a stowage plant of the steamship "West Aleta," which has been introduced in evidence, from which you will note that the vessel had Cardiff, Rotterdam and Hamburg cargo. And it is stipulated that the amount of the Cardiff cargo, which consisted entirely of barrels of wine, was 2,634 tons; that the amount of Rotterdam cargo, which consisted of general merchandise, some wine, was 1,503 tons; and that the amount of Hamburg cargo, which consisted of general merchandise, was 661 tons. As a surveyor of Shipping Board vessels, would it, in your opinion, have been possible to have stowed this vessel with the amount of cargo which I have indicated to you, with the amount of wine which they had on board, to have discharged

(Testimony of William J. Murray.)

Cardiff first, then gone to Rotterdam and discharged Rotterdam, and then gone to Hamburg, bearing in mind that the Hamburg cargo is stipulated to have been general merchandise, and the Cardiff cargo is stipulated to have been solely wine.

A. Well, that would depend entirely on the way the cargo was received, and also on the future movements [389] of the vessel after the discharge of the present cargo.

Q. Granted that the future movements of the vessel were to sail directly from the port of San Francisco, which it is stipulated it did, to Europe, could it have been stowed so that Cardiff could have come out first with that much wine on the vessel?

A. You understood my answer; I said "future movement of the vessel after this cargo was discharged."

Q. The ports of call would have been Rotterdam and Hamburg after she left Cardiff; could you have loaded to discharge Cardiff first?

A. I don't think you get the point yet that I mean; I mean her return voyage, having the return voyage in sight; that would have a great deal to do with the loading.

Q. Mr. Hooper, of Williams, Dimond & Co. has testified—

Mr. MANNON.—If your Honor please, I object to any statement to this witness as to what Mr. Hooper has testified. This is an expert witness.

The COURT.—Objection sustained.

(Testimony of William J. Murray.)

Mr. GRAHAM.—Q. Do you know where the return cargo of these vessels in the European-Pacific service was picked up?

A. No, I was not familiar with the trade.

Q. You don't know anything about the return cargo?

A. No, I was not familiar with it.

Q. So you cannot say whether you could have loaded 12,000 barrels of wine on that vessel for discharge at Cardiff, first? A. I should say not.

Q. Concerning this return cargo, on the supposition that the return cargo on this vessel was to be loaded at United Kingdom ports, what would your answer then be as to the discharge at Cardiff first?

A. I would load her in that case for discharge at United Kingdom ports last. [390]

Cross-examination.

Mr. MANNON.—Q. Were you employed as marine surveyor by Williams, Dimond & Co. in 1919 and 1920?

A. Yes, I was on a number of their vessels.

Q. But you were not working exclusively for them, were you, Mr. Murray? A. No.

Q. You worked for Williams, Dimond & Co., and you worked for other people?

A. For other people, as well.

Q. How big a vessel are you testifying about here?

A. Well, I have not this ship in mind particularly. I figure that this ship is what we would call 8,800 of 9,000 ton deadweight.

(Testimony of William J. Murray.)

Q. And it doesn't make any particular difference in your mind what kind of a ship she was, in testifying, does it, whether she was 8,800 or 9,000 deadweight, or 7,000 or 10,000?

A. No, that is immaterial.

Q. And there is nothing in your mind particularly, either, as to what kind of a ship she was, if she was a general cargo ship, is there?

A. No, sir.

Q. All these Williams-Dimond ships which went out of San Francisco during 1919 and 1920 that you had anything to do with were loaded with reference to the return voyage, were they not?

A. Not all of them.

Q. Were any of them?

A. I loaded a number of those ships going to the east coast, some of them direct to New York, alone, some of them going to Philadelphia and New York; I loaded a number of ships with a full cargo of grain, and of flour for one port discharge.

Q. And you loaded some of them going to the east coast of the United States and then going over to the United Kingdom and continental ports?

A. No, I never knew of a cargo that I had anything [391] at all to do with that went that route.

Q. Did you have anything to do with the "Consumsett"? A. I don't recall it.

Q. You said something when examined by Mr. Graham about the necessity of loading the vessel having regard to the return voyage; what did you mean by that?

(Testimony of William J. Murray.)

A. Well, I will tell you: In this case here you are going up the English Channel into the North Sea; if you went to Cardiff and discharged the bulk of your cargo and then went over to Rotterdam and to Hamburg and discharged, your ship was then what we call "flying light"; she was coming out of the North Sea down into the English Channel, where the weather is very severe, and where a light ship is at a decided disadvantage. Then another feature would be, if they had in view a return cargo, to avoid going into the same port a second time.

Q. And what would be another feature in regard to the stowage?

A. Taking into consideration the general seaworthiness of the vessel, and the care of the vessel, the safety of the vessel.

Q. And in doing that you consider the vessel on the return voyage as well as on the outbound voyage? A. Exactly.

Q. And in all of the work you did for Williams-Dimond, that was one of the factors you took into consideration, was it?

A. Always on instructions from the office as to what was planned; of course, as a surveyor I had nothing at all to say about the routing of the ship; my duty was to supervise the loading of the vessel, and see that she was in a seaworthy condition when loaded, and give her a certificate accordingly.

Q. Would it be practicable to take a ship like the "West Aleta," an 8,800-ton ship we have talked of

(Testimony of William J. Murray.)

her here as being, and put on 11,000 barrels of wine aboard her, and take them to Cardiff, without any other cargo at all?

A. Take it to Cardiff without any [392] other cargo?

Q. Yes.

A. Why, certainly; you mean load part cargo for Cardiff?

Q. Yes. A. Certainly.

Q. That could have been done? A. Yes, sir.

Q. And then you could have loaded on at Cardiff, couldn't you, under your direction, the other cargo the boat had for Rotterdam and Hamburg?

A. That would depend entirely as to what cargo there was. It is very evident in this ship that they have loaded wet goods over dry goods; that is something we have always guarded against.

Q. Did they do that in this ship?

A. I see they have it in the deck.

Q. Then that was not loaded right, was it?

A. Oh, yes, it was loaded right, there is no question at all about it, the ship can be made seaworthy, but I am talking about taking precautions.

Q. As a matter of fact, your safest stowage is to have the dry goods on top and the wet goods on the bottom, to keep the wet goods from breaking and the contents running down onto the dry goods?

A. Exactly.

Q. And this was not loaded that way?

A. To a great extent it was.

Q. But they had some wet goods over dry goods?

(Testimony of William J. Murray.)

A. I would not say over the dry goods; they had some wine on the upper deck.

Q. That doesn't suit you as a proper method of stowage, does it?

A. If there was a chance to take care of it in some other way.

Q. You would not have done that?

A. Not if I could have avoided it. This ship would take, say, a week to load; your cargo comes along, and it has to be taken care of as it comes; it is not like putting it in the warehouse, where you can put it on the floor, here, and put more on the floor, there, and leave little alleyways for you; you have to close the ship up. [393]

Q. By closing the ship up, you mean closing up the different alleyways and hatches? A. Yes.

Q. So that the way the cargo was delivered to the ship had a good deal to do with the way it was stowed, did it? A. Yes.

Q. And it did on this ship, did it?

A. I don't think I had anything at all to do with this ship.

Q. It is a fact, though, that one of the things that has to do with the way you stow the ship is the manner in which you receive the goods on the ship?

A. Yes, that has a lot to do with it, and also on the future movements of the ship. In our trade, now, we have ships in the Australian trade; they are going to four ports, Adelaide, Melbourne, Sydney, Newcastle; geographically, in rotation, it is

(Testimony of William J. Murray.)

Newcastle, Sydney, Melbourne, Adelaide. If we went into Newcastle and discharged our cargo, and then to Sydney, and then to Melbourne, and then to Adelaide, and had to come back to New Castle to load coal, it would mean entering Newcastle the second time, it would be coming back through a passage which is just as treacherous and just as bad from the weather point of view, through the Bass Straits, coming around the southeast end of Australia, as it is in the North Sea and in the English Channel. Then, again, we may have cargo destined, when the last load had come on, so when you get your deckload, the bulk of your cargo for Adelaide—

Q. Just a moment, Mr. Murray, I am afraid you are not answering the question. I wanted to find out from you, and I think you have not been asked any questions about the rotation of ports of call, but I wanted to find out from you whether you could have put on this ship in San Francisco nothing at all but the cargo for Rotterdam and for Hamburg, and have taken it over there in that ship without any Cardiff cargo?

A. Oh, there is no question about that. [394]

Q. Could you, or couldn't you? A. Yes.

Q. Without any cargo at all except the Hamburg cargo, could you have had that ship laden in San Francisco with Hamburg cargo alone and taken it to Hamburg out of San Francisco?

A. Sure, you could.

Q. And with the stowage plan before you, you

(Testimony of William J. Murray.)

could have taken that ship to Cardiff and had her so laden that you could have taken the wine out of her first, couldn't you?

A. There is no doubt about it if that was desired.

Q. If it were also desired to have the Cardiff cargo taken out first and the Rotterdam cargo taken out of her second, you could have accomplished that, couldn't you?

A. It could have been done, just exactly as I said a moment ago about our Australian ships.

Q. Just confine yourself to an answer to my question. You could have loaded that ship so that the Rotterdam cargo could have been taken out of her second; Cardiff first and Rotterdam second?

A. Well, now, let me see. No, I don't believe you could. There was too much wine, judging from the space that is taken up here.

Q. Too much wine?

A. Too much wine for Cardiff.

Q. Then it would not have been possible to have loaded that ship so you could have taken the wine out at Cardiff; is that what is the matter, you could not have taken the wine out at Cardiff?

A. No, I don't see how you could have done it.

Q. Not in any way at all?

A. No, I don't see how you could have done it.

Q. But you could have loaded the ship with the wine you had for Cardiff, without anything else on the ship, couldn't you? A. Oh, certainly.

Q. And have unloaded that? A. Yes.

(Testimony of William J. Murray.)

Q. And you could have carried from Cardiff to Rotterdam the [395] Rotterdam cargo in that ship, with nothing else in the ship?

A. From Cardiff to Rotterdam?

Q. Yes, from Cardiff to Rotterdam.

A. You have rice, you can't stow that under wine; you have canned goods, you can't stow that under wine. You have merchandise, beans, rice. Without having the quantities before me, I don't see how you could afford to take the chance to stow that wine for first discharge, and then the other cargo for second discharge.

Q. Your trouble is not about stowing the wine at all; you would get it to Cardiff all right, wouldn't you?

A. It is the safety of the cargo underneath it.

Q. With that ship loaded as she was, she could put into Cardiff, couldn't she, or could she?

A. Put into Cardiff?

Q. Yes.

A. There was nothing to prevent her going to Cardiff.

Q. When she put into Cardiff would it be possible to take the wine off at Cardiff?

A. By discharging your shelter-deck there.

Q. So that the wine could have been taken off at Cardiff, could it?

A. You would have to come pretty near discharging your ship to do it.

Q. Well, you know, don't you, whether or not the wine could have been taken off at Cardiff?

(Testimony of William J. Murray.)

A. No, I don't.

Q. You don't know whether the wine could have been taken off at Cardiff, or not?

A. No, I don't, and nobody else could tell that.

Q. And you don't know whether the Rotterdam cargo could have been taken off at Rotterdam, either: Is that right? A. No.

Q. And you don't know whether the Hamburg cargo could have been taken off at Hamburg?

A. Oh, yes.

Q. The Hamburg cargo could have been taken off at Hamburg?

A. Yes, you can see that plainly.

Q. You know, as a matter of business, don't you, that that ship, [396] laden as she was, arriving at the port of Cardiff, could have been unloaded as to the wine?

A. The ship could have been discharged entirely there, everything that was in the way put on the wharf, and then reloaded back again.

Q. When that ship got to Cardiff, loaded as she was, the wine could have been taken off, couldn't it? Will you please answer that question?

A. The whole ship could have been discharged.

Q. Will you please answer my question? I say when that ship got to Cardiff, loaded as she was loaded, the wine could have been taken off?

A. Just exactly as I have said, if the ship was discharged so that you could have worked it.

Q. So that if you had been in charge, you could

(Testimony of William J. Murray.)

have taken that wine out of the ship at Cardiff, couldn't you, loaded just as she was?

A. I would not answer that question, because I don't know just how the stowage was, but I could have discharged the ship.

Q. You could have taken the wine out at Cardiff? A. And reloaded the other cargo.

Q. And you could have made arrangements for that in San Francisco when you started, couldn't you?

A. No, I don't know about that; I don't know about your making arrangements beforehand. What I have in mind was about discharging the ship at Cardiff, if that ship put into Cardiff in distress and had to be discharged for repairs, the cargo could have been discharged and reloaded. That is what I have in mind.

Q. Do you mean to testify, with that stowage plan before you, that it would have been necessary to discharge all of that cargo in order to get the wine off? A. A great deal of it.

Q. Do you mean to testify that it would be necessary to discharge all of it? A. No.

Q. Then that is not the fact, is it?

A. No, because they have [397] wine in the lower holds for other ports.

Q. Couldn't you take out some passage ways to get your wine out, without taking all the cargo off that ship, loaded even as she was?

A. Well, I will tell you: When you start to break stowage, you can cut through a hatch, if

(Testimony of William J. Murray.)

your cargo is such that you can handle it, but it invariably means that the bulk of it has to come out. Now, to take the bulk of that cargo out and take the Cardiff wine out of that ship, you would have that ship topheavy.

Q. That is, when you take it out at Cardiff?

A. Yes, unless you discharge a corresponding amount to guard against that.

Q. When you had the ship at Cardiff, with the wine out of her, you could have made arrangements to take her over to Rotterdam safely, couldn't you?

A. By reloading that cargo back in her that I had to discharge.

Q. And when you got to Rotterdam you could make arrangements, with the Rotterdam cargo out of her, to take her to Hamburg, couldn't you?

A. Yes, by reloading the Hamburg cargo.

Q. You have never made any study of that stowage plan, have you?

A. I never saw it before until it was handed to me here.

Q. And you don't pretend to say how the ship should or should not have been stowed, merely upon a three-minute examination of that stowage plan, do you? You couldn't say that, could you?

A. No, I could not.

Q. And you wouldn't want to say what you would do under those circumstances, would you?

A. Well, I am speaking according to my ex-

(Testimony of William J. Murray.)

perience in the game; I have been years in the business.

Q. But your examination of that stowage plan here has been a mere casual examination of it, has it not?

A. I have just made a casual examination of it, yes. [398]

Q. And you would not load a ship on the mere cursory examination that you have just made of this stowage plan, would you?

A. When we start loading a ship we don't always know what we are going to wind up with; we have not the cargo all on hand that we are going to load, even with the engagement list that you get, for many of them will be cancelled, you will get different ports and different commodities, so you don't know what you are going to get until you get it.

Q. But you have to load your ship with that, notwithstanding? A. Yes.

Q. And that is what you would have to do with this cargo that was destined for Cardiff, Rotterdam and Hamburg, delivered to you in that way?

A. Yes.

Q. And you would have taken it and handled it and discharged it where they told you it was to be discharged, wouldn't you?

A. We would discharge the cargo if they wanted it.

(Testimony of William J. Murray.)

Redirect Examination.

Mr. GRAHAM.—Q. Have you ever loaded wine before? A. Yes, lots of it.

Q. Mr. Mannon has spoken to you about a cursory examination of three minutes or more of this stowage plan. If you knew that a vessel had to load 11,000 barrels of wine for a port of call, one of these 8,800-ton vessels, would you need more than a cursory examination of that stowage plan to show you where that ought to be loaded?

A. Not for a starter.

Q. In other words, you could or could not tell where the 11,000 barrels of wine ought to go?

A. If I got the orders to load that 11,000 barrels of wine, I would go ahead and make my plans accordingly.

Q. Am I correct in this, Mr. Murray— [399]

Mr. MANNON.—Your Honor, this is an expert witness, and I object to any leading question before it is asked. I think the witness ought to make the answer to it himself.

The COURT.—Be careful about that, Mr. Graham.

Mr. GRAHAM.—Yes, your Honor.

Q. From that plan as you see it there, with only the cursory examination, and the knowledge that she was to load 11,000 barrels of wine for Cardiff, what would you say of the possibility or the impossibility of stowing her for Cardiff first discharge, could you do it?

A. If the cargo came first?

(Testimony of William J. Murray.)

Q. No; with your knowledge that she had to put 11,000 barrels of Cardiff cargo in her.

A. To load her to go into Cardiff first?

Q. Could you do that?

A. It could have been done.

Q. What would have been the effect on the seaworthiness of the vessel, or on the other cargo on her, knowing that she had Hamburg general merchandise, and Rotterdam general merchandise?

A. If you have enough cargo in the loading as you progress there to keep that ship stiffened, you could go ahead with loading your full cargo.

Q. Eleven thousand barrels of wine?

A. If you have other cargo to go along to equalize it.

Q. I don't think you understand my question. I am asking you if she would have been seaworthy, or if it would have been proper stowage to have loaded those 11,000 barrels of wine in any other than the place in which it was loaded; would it or would it not be?

Mr. MANNON.—That is not the question the witness has been asked.

Mr. GRAHAM.—I understand that, but I don't think the witness understood the first question that was asked him.

Mr. MANNON.—I think he understood it, and he answered it. [400]

A. Well, when it comes to loading cargo in a ship, there is a limit to it, to be governed in the way it comes to you.

(Testimony of William J. Murray.)

Mr. GRAHAM.—Q. Taking into consideration the amount of wine which this vessel was to load at that time, that is, 11,000 barrels for Cardiff—just that, never mind about bringing it down to the ship—how would you load it properly? The way she was loaded, or some other way?

Mr. MANNON.—That is a leading question.

A. You have to distribute in the ship and get your weights equal; you have to get some of it in each hatch; you have to get the bulk of it in the lower holds. I don't see how you could have got by loading it any different.

Mr. GRAHAM.—Q. Do you think, Mr. Murray, you could have or could not have loaded your ship so that the Hamburg general merchandise and the Rotterdam general merchandise could have gone down below for discharge after Cardiff, with that much wine on board?

A. I would not load her that way.

Mr. GRAHAM.—That is all.

Recross-examination.

Mr. MANNON.—Q. Would it make any difference in your testimony that the ship had about 4,000 barrels of liquor for Rotterdam?

A. I see there is some here; that is only a small amount in comparison.

Q. So that you could have put the Rotterdam wine where the Cardiff wine was, in part; those barrels goods could have been put interchangeably on the ship, could they not?

A. I don't know. You have to assume here

(Testimony of William J. Murray.)

the quantities, apparently, from the spaces written in.

Q. Now, Mr. Murray, we perhaps can get at it in this way: So for as the liquor cargo is concerned, some of which was going to [401] Cardiff and some of which was going to Rotterdam, you could have loaded that vessel so that the liquor cargo could have been taken off at either Cardiff or Rotterdam, couldn't you?

A. And practically discharged the shelter-deck of the ship.

Q. Yes; so that, so far as the liquor on the boat is concerned, the boat could have been discharged either at Rotterdam or at Cardiff?

Mr. GRAHAM.—I object to that, your Honor, I think the witness has already testified on that matter.

The COURT.—I will overrule the objection.

A. If she went into Cardiff to discharge the quantity that is shown here, I figure that she would have to practically discharge the entire shelter-deck of all the Rotterdam and the Hamburg cargo.

Mr. MANNON.—Q. But it is the fact, just in regard to the way the goods were placed on the ship, that the barrels of wine or brandy destined for Rotterdam could have been changed about with the barrels of wine destined for Cardiff, assuming that they were about the same size.

A. No, the proportion of wine for Cardiff is far in excess, as shown on this print here, of the quantity that was going to Hamburg, or to Rotterdam.

(Testimony of William J. Murray.)

Q. What I want to find out from you, Mr. Murray, is this: There are about 4,000 barrels of wine, or brandy on that ship going to Rotterdam, aren't there? A. Yes.

Q. And about 11,000 barrels of wine going to Cardiff? A. Yes.

Q. Those facts are admitted here. You could have taken that 4,000 barrels off, had the ship been so loaded, either at Cardiff or at Rotterdam, couldn't you?

A. Now, you are speaking of the Rotterdam cargo?

Q. If you will just answer the question, Mr. Murray, we will get along faster. I will ask the reporter to read it to you. [402]

(Question read by the reporter.)

A. I don't know what 4,000 barrels you are referring to.

Mr. MANNON.—Your Honor, it will take me some little time to finish with this witness, and as it is now just 12, I suggest we take a recess.

The COURT.—Recess until two o'clock.

(A recess was here taken until two o'clock P. M.) [403]

AFTERNOON SESSION.

WILLIAM J. MURRAY, recross-examination (resumed).

Mr. MANNON.—Mr. Reporter, will you read the last question and answer.

(Record read by the Reporter.)

(Testimony of William J. Murray.)

Q. What I was getting at, Mr. Murray, was that a barrel of wine is the same article, no matter what the port of destination is, that is, whether it is wine for Cardiff, or whether it is wine for Rotterdam, it is wine just the same; that is right, isn't it?

A. Your reference was to the Rotterdam cargo.

Q. Won't you please answer the question that I am asking you; I say that a barrel of wine, whether it is for Cardiff, or whether it is for Rotterdam, is a barrel of wine? A. Yes, certainly it is.

Q. So that on this boat it appears that there were about 4,000 barrels for Rotterdam, and about 11,000 for Cardiff; you had to take that 4,000 barrels of wine off that ship somewhere; the 4,000 barrels could have been taken off at either port, at either Rotterdam or at Cardiff, couldn't they?

A. It could have been so stowed.

Q. And you could have done that, could you, had you been stowing the ship?

A. Now, if I may be permitted to explain to you that as a marine surveyor, where I have the say about the stowage, I first get the list of engagements, the tonnage for the various ports; then you take the cubical capacity of the ship, and from that you familiarize yourself with the plans for stowage What I am driving at is this, in a case of that kind I would know and be better able to say just what I could do than by picking up that stowage plan, and by having some figures before me. [404]

Q. Then, really, unless you had been given a list

(Testimony of William J. Murray.)

of what the cargo was and given something to show you how much space there was on the ship, and something about the cubical contents of the cargo, you could not stow the ship, could you?

A. No, sir.

Q. And you would not know how she ought to be stowed? A. No, sir.

Q. And you have not got that in this case, have you? A. I have not got that.

Mr. MANNON.—If your Honor please, I move to strike out all of the testimony of the witness in regard to the stowage of the ship.

The COURT.—I will deny the motion.

Mr. MANNON.—Q. So that in giving answers to Mr. Graham this morning with regard to stowage, you would feel that those answers were not properly given in view of the facts that you didn't know what the tonnage of the ship was, or what her cubical capacity was?

A. As I tried to explain to you when I was testifying.

Q. You could not tell whether you could load her so you could take the cargo off, or not, unless you had those details?

A. Not according to that stowage plan.

Q. And you could not tell whether you could take the cargo off for Rotterdam if you stowed her yourself?

A. You say if I stowed her myself?

Q. Yes.

A. Oh, there is no question about it, that if I had

(Testimony of William J. Murray.)

the supervision of the loading of the ship and planned it accordingly as desired, I could.

Q. Assuming that the ship was big enough, you could have put the cargo in so that you could have unloaded the Cardiff cargo at Cardiff and the Rotterdam cargo at Rotterdam, and the Hamburg cargo at Hamburg? A. Yes, sir.

Q. So far as you know, and what little you know about this ship, that could have been done?

A. Yes, sir.

Q. You cannot tell from the stowage plan how big the ship was, [405] can you?

A. No, sir, because there are no figures on it to indicate.

Q. And you cannot tell from the stowage plan what the cubical contents of the ship were?

A. Nor of the cargo.

Q. And you have not got the cubical contents of the cargo? A. No, sir.

Q. And you didn't see that stowage plan until this morning, did you?

A. Not until it was handed to me in court this morning.

Q. So you really wouldn't be able to testify about the stowage of the ship and the unloading of the cargo unless you had that data that you have referred to? A. Not from that stowage plan.

Q. You would have to have those figures about the cubical contents? A. I certainly would.

Q. And you would have to have the figures in regard to the cubical contents of the cargo, too?

(Testimony of William J. Murray.)

A. Yes.

Q. That is, when you stow a ship, you take so much material that has a certain volume and a certain weight and put it into a vessel, and the vessel has to have the size, and then you have to balance the vessel so she will steer properly?

A. You have to figure on your weight and your distribution.

Q. And that is something you have been quite familiar with in the past? A. Yes.

Mr. MANNON.—I renew my motion, your Honor. The witness says he, himself, cannot testify in regard to this stowage.

The COURT.—I will deny the motion.

Mr. MANNON.—Q. Now, with regard to the wine that was on this ship for Cardiff, in accordance with the questions asked you this morning, I take it that you cannot tell where you would put that wine in this ship without knowing how big the ship was: Is that right?

A. You want to have those facts before you.

Q. And you would have to know something about the bulk of the [406] wine, too?

A. Well, we know what that is.

Q. And that same thing would be true about the cargo that was on the vessel for Rotterdam, you couldn't tell anything about the stowage or how to stow her unless you knew what this cargo for Rotterdam was?

A. You must have the details of it.

Q. And, likewise, it would be true about the

(Testimony of William J. Murray.)

stowage of the Rotterdam cargo, you would have to have the details? A. Yes, one applies to all.

Q. Then when you had all that detail, you would have to know something about the vessel, how big she was? A. Yes, sir.

Q. And you would have to know something about the interior arrangement of the vessel, wouldn't you? A. The cubical contents.

Q. And you would have to know something about her decks? A. Yes.

Q. You would have to know something about her holds? A. Yes.

Q. You will also have to stow it with reference to the pipes, that is, with reference to heat or cold?

A. That would not make any difference. Do you say pipes?

Q. What I had reference to was the heat, really.

A. Oh, yes, of course all those things have to be taken into consideration.

Q. And you would have to take into consideration whether there was wet cargo, or dry cargo?

A. Exactly.

Q. And you have not got that detail at all, have you? A. No, sir, I have not.

Q. Would the number of hatches on the ship make any difference about the way you would stow her?

A. That would be a contributing factor.

Q. Will you explain to the Court why the hatches would make any difference?

(Testimony of William J. Murray.)

A. Hatches lead to compartments, and it is through these hatches that the cargo is handled.

Q. The hold, itself, is divided into compartments, isn't it?

A. That is what we were speaking of, when we speak of the hold we [407] speak of them as compartments.

Q. I suppose the vessel is loaded, isn't she, through the various hatches and down into the holds?

A. Yes, that is the only way of getting there.

Q. And when you want to unload the cargo, that is, in so far as merely the physical act of taking the cargo out is concerned, whether you may do that thing, or not, would depend on the hatches and the holds wouldn't it? A. Exactly.

Q. Would the bunkers in a ship have anything to do with her stowage, or her seaworthiness, or her stowage in regard to seaworthiness?

A. You mean her bunker hatch?

Q. Yes.

A. Yes, you have to consider that, the same as you would any other compartment.

Q. And you would have to know about that before you could tell how a vessel ought to be fixed up, that is, how she ought to be stowed?

A. Yes, sir.

Q. Do you have storage tanks on the ship, tanks of some sort? A. Storage tanks?

Q. Yes, tanks of any kind.

A. Not for cargo purposes.

(Testimony of William J. Murray.)

Q. No, I don't mean that, I mean in regard to the operation of the ship.

A. You have your deep tanks, in some ships, for fuel oil; that is designated as a tank; you have your double bottoms; they are designated as tanks. You have your fore peak, and you have your after peak.

Q. Would you have to consider whether the ship had double bottoms, or not?

A. You certainly would.

Q. And would you have to consider about these other storage tanks you mentioned, in stowing her?

A. You mean in reference to the deep tank and the double bottoms, and the peaks?

Q. Yes. A. Yes, sir.

Q. In other words, you really have two problems, I take it, in [408] stowing a ship; one is to get your cubical contents of the cargo into your ship; that is one of them; the other is to get your cargo in there so that with reference to the size of the ship, and her own bunkers, and her stores, and one thing and another, she will be seaworthy?

A. Yes, the main thing is as to her stability.

Q. Will you explain to the Court what your duties as a marine surveyor are?

A. Supervision of the stowage for the purpose of giving a certificate that the vessel is in a seaworthy condition when ready to leave port.

Q. And in order to do that, what factors do you give attention to?

A. You give attention to the distribution of

(Testimony of William J. Murray.)

weights, whether it be as cargo, or as fuel in the double bottoms and in the tank, or water ballast, the distribution of the weight of the cargo as a whole, and then the distribution of weight where you are stopping at one port to discharge a portion of the cargo and to proceed to another, at all times keeping in mind the stability and the seaworthiness of the ship.

Q. And those, of course, are the factors that you have not got in regard to this ship, aren't they?

A. I have not got those, no, sir.

Q. Now, I want to call your attention to this stowage plan. This bottom line represents the holds. A. Yes.

Q. What do you call the space that is immediately above the bottom line?

A. The 'tween-decks or shelter-deck.

Q. What is the space above that?

A. Up here is the superstructure.

Q. And this would be the deck of the boat, would it?

A. That would be the weather deck; that is the deck exposed to the weather.

Q. You don't carry lumber on that, do you?

A. Rough lumber or barrel cargo, something of that sort—not a perishable cargo.

Q. When you load the vessel you load her down through the hatches, from what you might call the top deck, or the upper deck, down the shelter-deck and into the holds?

(Testimony of William J. Murray.)

A. Here it is; there is an [409] opening right here; that is the hatchway.

Q. And that is the reason you have to know how many hatches she has in order to load the ship, or know whether you are going to load one or all hatches, is it, because you load down through the hatches: Is that right? A. Yes.

Q. Then, in order to take goods out of the lower holds, you would have to break out this cargo that is in here in the shelter-deck, if it were covered over? A. Yes.

Q. You spoke this morning, in answer to Mr. Graham's questions, with regard to putting wet cargo on top of dry cargo; it is the fact, is it not, that ordinarily you endeavor to have the dry cargo on top and the wet cargo on the bottom, if you can? A. Yes, sir.

Q. And your reason for that is that like here the wine might have leaked out and got down on the dry cargo?

A. Yes, that is exactly the reason. Another feature is that going down through the tropics this portion of the hold is submerged, and you get the benefit of radiation passing through the sea water. Up here it is exposed to heat and sun, both from the top side and on the steel deck; that would have a tendency, with wet goods, with commodities of that kind, of loosening up your cooperage and causing leaks.

Q. And with regard to bean oil, or wine, or brandy, those are all commodities that you give

(Testimony of William J. Murray.)

some attention to the question of temperature in stowing, do you? A. Always.

Q. And it is particularly necessary with regard to dry cargo, to put it where no water will reach it, if you can avoid it? A. You have to avoid it.

Q. And all of these are your problems as a man who stows ships? A. Exactly.

Q. As a marine surveyor you give certificates with regard to the cargo, with regard to the stowage of the ship, do you?

A. I have acted as marine surveyor for consignees of cargo, as well as [410] consignees of the ship.

Q. Can you explain to the Court just what it is that you do? What I want to get at is, what is the use of these documents that you make out?

A. As a surveyor for the ship, I give a certificate that she has been loaded in a seaworthy condition for the safe carriage of dry and unperishable cargo. In the event of damage, I go down there and ascertain the cause, the whys and the wherefores in your opinion, and certify according.

Q. The insurance people are interested in that, too, aren't they? A. Yes, sir.

Q. And the owners of the vessel, the common carriers?

A. Everybody concerned is interested.

Q. You don't do this stowage yourself, Mr. Murray, do you? A. No, sir, I just supervise it.

Q. The stowage is actually done by the ship, is it not, as a matter of practice?

(Testimony of William J. Murray.)

A. The stowage is done by the stevedore employed by the ship.

Q. But it is under the immediate direction of the ship's officers? A. As a rule, yes.

Q. Then you have one or more surveyors down to see that the ship is stowed?

A. If you are employed as a surveyor you visit the ship from time to time, you consult with the men employed there, and advise with them as to what is to go here, and what is to go there, how it is to be stowed, how it is to be dunnaged.

Q. You cannot always get the cargo that you particularly want, on account of the way the cargo is delivered to you, can you?

A. That very often occurs.

Q. And that is one of the problems of the ship's officers, and of the surveyor in regard to the stowage?

A. It is more the concern of the ship's officers and the stevedores.

Q. And that is for the reason that the stevedores make a certificate [411] or inspection of the ship after she is stowed, usually?

A. If they do their duty, they are there periodically during the loading; they are there at the closing, at the windup, in order to see that the hatches are properly covered and battened, and that everything is chopped off and secured. Also to take the vessel's draft, to see that she has not exceeded her allowed draft; also to ascertain that

(Testimony of William J. Murray.)

she has sufficient fuel to carry her to the next port of fueling.

Q. And after you have done that, that is, after a surveyor has done all of that, he gives some written evidence of it?

A. He gives a certificate certifying that the vessel has been loaded under his supervision, giving the particulars as to cargo, draft, fuel oil, or coal, whichever it is she is burning, and that in his opinion the vessel is in a seaworthy condition for the voyage proposed.

Q. And of course, it is his responsibility on that certificate to have known about all the matters that you speak of?

A. His reputation is there, and his record is there; there is no financial responsibility.

Q. There are a certain number of men in any port of any consequence who attend to those matters that you have just described?

A. As marine surveyors, yes.

Q. A certain number of them in San Francisco?

A. Yes.

Q. And, likewise, in each of the other ports?

A. Yes.

Redirect Examination.

Mr. GRAHAM.—Q. Mr. Mannon has asked you about giving your opinion as to the relative stowage of cargo, and the possibility or the impossibility of unloading it if you didn't know anything about the ship. I appreciate that if you didn't know anything about the ship you could not tell

(Testimony of William J. Murray.)

how to stow it. That is reasonable to [412] believe. Now, if I told you that this vessel was one of the Shipping Board vessels engaged in the European-Pacific service, that its name was the "West Aleta," and it had to be loaded on board over 11,000 barrels of wine for discharge at Cardiff, and that the cargo, including this wine, consisted of approximately 2,600 tons for Cardiff and 1,500 tons for Rotterdam, and 660 tons for Hamburg, what would you say as to—

The COURT.—And giving him the capacity of the ship.

Mr. GRAHAM.—I think he knows that, your Honor.

The COURT.—Yes. I think you covered this this morning, Mr. Graham, all that you are trying to bring out now. I am pretty sure you covered it, but you may go ahead, however.

Br. GRAHAM.—Q. (Continuing.) Could you tell me what the possibilities of loading that ship for discharge at Cardiff would be?

Mr. MANNON.—I object to that as immaterial, and as not proper redirect examination, and the matter was covered this morning.

Mr. GRAHAM.—I am trying to bring out the fact that this gentleman cannot testify to a ship he knows nothing about, but that as to a ship that he does know something about I think he can testify to these matters.

The COURT.—I think the matter was covered this morning, but I will allow it.

(Testimony of Ethel Olsen.)

Mr. GRAHAM.—If your Honor is satisfied the matter was covered this morning, I won't go over it again.

The COURT.—I think it was.

Mr. GRAHAM.—That is all, Captain Murray.

TESTIMONY OF ETHEL OLSEN, FOR RESPONDENT.

ETHEL OLSEN, called for the respondent, sworn.

Mr. GRAHAM.—If your Honor please, I have called upon the libelants in these three cases to produce certain documents, but as yet [413] I have received none of the documents. I am now showing Mr. Mannon some copies which I have just gotten out of the file—

Mr. MANNON.—And if your Honor will bear with us for a moment I think that we can save time. I will see if we have them.

The COURT.—Yes, I will.

Mr. GRAHAM.—Q. With whom were you employed in 1919 and in 1920, Miss Olsen?

A. Williams, Dimond & Co.

Q. What position did you have at that time with that company?

A. I was secretary to Mr. Hooper.

Q. What position did Mr. Hooper have?

A. He was general freight agent.

Q. I will show you a copy of a letter which has been put in evidence and will ask you if you have

(Testimony of Ethel Olsen.)

ever seen the original or a copy of that letter before? A. Yes, I have.

Q. Did you write the letter, or not?

A. Yes, I did.

Q. Did you have any hand in conducting negotiations for the booking of freight on the various Shipping Board vessels that Williams-Dimond had or handled at that time, or not?

A. No, I really didn't.

Q. How did you come to write this letter; just explain that to the Court.

A. Sometimes letters would come in, and sometimes the shippers would phone in, in which case Mr. Hooper would say to me, Such and such a firm has made this reservation, you confirm it. Then I would always write a letter. I would answer the letter or the telephone conversation.

Q. That is, confirming a previous telephone conversation? A. Yes.

Q. Do you know with whom telephone conversations were had with the California Wine Association.?

Mr. MANNON.—If your Honor please, I object to that unless it appears that this lady had the telephone conversations.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Did you have any telephone conversations with [414] any officials of the California Wine Association relative to booking cargo on your vessels, or not?

A. Yes, I did, a few times.

(Testimony of Ethel Olsen.)

Q. What is the gentleman's name in the California Wine Association, if you know?

A. Mr. Jenks.

Q. Do you know what his position was over there? A. No, I really don't know.

Q. Did you or did you not inform Mr. Jenks of the routing of these various vessels that Williams-Dimond were handling at that time?

Mr. MANNON.—I object to that, your Honor. The question should ask for the conversation.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Just briefly tell the Court the nature of your conversation with Mr. Jenks at that time?

A. I could not state offhand about any particular shipment, or in connection with the shipment on any particular steamer; if Mr. Jenks would telephone, or anybody else from there, asking about a steamer, I would probably answer him, but I could not relate specifically any conversation I had.

Q. You had a general custom of doing business over the telephone with these various shippers, didn't you? A. Yes.

Mr. MANNON.—I object to the question as leading, your Honor, and, secondly, doing business over the telephone is not a custom.

The COURT.—I will overrule the objection.

Mr. GRAHAM.—Q. Do you remember any telephone conversation that you had with Mr. Jenks, or with these other various shippers relative to their bookings and shipments on the ships?

(Testimony of Ethel Olsen.)

A. Generally, but I couldn't—

Q. What was the general nature of those conversations?

Mr. MANNON.—I object to that, first, as immaterial, and, secondly, that the witness has not completed her other answer. He asked her first if she remembered any particular conversation. [415]

Mr. GRAHAM.—The witness testified it was customary to carry on conversations over the telephone; I am asking her what the customary conversations were.

The COURT.—Objection overruled.

A. Well, if a shipper would phone and ask Mr. Hooper and he was not in, they would very often ask me if we had a certain steamer on the berth for certain ports, in which event I would give them the information that would be at hand. If they asked if we had a steamer for such a port, I would say either "Yes" or "No"; if I said "Yes" I would tell them where the steamer was going, that is, her itinerary; if they said what they wanted to ship, in some cases I could say "Yes," I could make the reservation firm, but in others I would have to take it up with Mr. Hooper, particularly if the steamer was almost full.

Mr. GRAHAM.—Q. Do I understand you to have said that you tell them the route, or wouldn't you tell them the route? A. Yes, I would.

Q. I show you here a copy of a bill of lading of the California Wine Association, from the port of

(Testimony of Ethel Olsen.)

San Francisco to the port of Cardiff; in such a case as that, if a man rang up and said he had 11,000 barrels of wine for shipment to Cardiff, what was your customary conversation with him, what would you say to him, what would you ask him, or what would you do? Would you tell him the route?

Mr. MANNON.—If your Honor please, I don't see how we can possibly be bound by supposititious conversations.

The COURT.—I don't see, either, and I don't see the object of the testimony.

Mr. GRAHAM.—The object of the testimony is merely to show that it was the custom to tell all these shippers, not only the California Wine Association, but practically all of them, or all of them, the routes that these vessels were taking. If your [416] Honor please, five years ago is a long time to remember one definite conversation that Miss Olsen may have had with Mr. Jenks over the telephone. I think she is entitled to testify to general custom, what their method was in carrying on business with the various shippers.

The COURT.—I will permit you to ask her if she would give the itinerary of the ship. The witness has already answered that question, and said it was customary, if I understood the witness correctly, to give the itinerary of the ship inquired about. I will sustain the objection to the last question.

Mr. GRAHAM.—Q. Was it customary to give the itinerary, as the Court has just said?

(Testimony of Ethel Olsen.)

A. Yes, it was.

Q. I show you again this same letter of November 25, and in the same paragraph you will note that it says, "This will also confirm reservation of space for your account covering shipment of 4,000 barrels of wine to be forwarded from here to Rotterdam on the above-named steamer." The steamer was the "West Aleta."

Mr. MANNON.—Is that the letter that is already in evidence as Libelant's Exhibit 12?

Mr. GRAHAM.—Yes. I desire to introduce this letter in evidence, dated December 16, 1919, to the California Wine Association, from Williams, Dimond & Co., relative to the "West Aleta."

Q. Is that your letter, Miss Olsen?

A. That is my letter but not my signature.

Q. You wrote the letter? A. Yes.

Q. Who signed it? A. Mr. Hooper.

Q. Mr. Hooper signed the letter?

A. Yes, it is his signature.

The COURT.—That is already in evidence.

Mr. GRAHAM.—No, not this one, your Honor. The one that was in was the letter of November 25. This is the letter of December 16. I offer it in evidence, and will read it: [417]

RESPONDENT'S EXHIBIT "I."

(Letterhead of Williams, Dimond & Co.)

"San Francisco, December 16th, 1919.

"No. 500-EO.

"California Wine Association,
216 Pine Street,
San Francisco.

"Gentlemen:

"SS. "West Aleta."

"This will confirm reservation of space for your account covering shipment of 2,000 barrels of Wine to be forwarded from here to Rotterdam on the above named steamer, as per our telephone conversation of even date.

"2020 barrels of Wine, previously booked for shipment on this steamer have been transferred for shipment on the SS. 'Cockaponset.' This leaves a total of 4100 barrels of Wine to be forwarded from here to Rotterdam on the SS. 'West Aleta.'

"We are now issuing shipping permits and receiving cargo on Pier 28 for this steamer.

"Thanking you for your kind co-operation, and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.

"Managers & Operators.

"F. A. HOOPER,

"General Freight Agent."

(The letter was marked Respondent's Exhibit "I.")

Q. I show you this letter and ask you if there

(Testimony of Ethel Olsen.)

were any telephone conversations, either by yourself or by Mr. Hooper which you heard, preceding that alteration in the shipment of the 2,000 barrels of wine?

A. I could not say now, I could not relate it; there must have been, or the letter would not have read that way.

Q. You say there must have been; is it my understanding, then that this letter would not have been written without previous conversation?

A. No, it would not.

Q. Can you or can you not say that the letter of November 25, which I have previously shown you, represents your contract to [418] carry, or has any bearing on your contract to carry the 4,000 barrels on the "West Aleta"?

A. This covers two different shipments, one to Cardiff for 10,000 barrels, and 4,000 barrels to Rotterdam.

Q. But does this subsequent letter take the place of the proposed 4,000 barrels for Rotterdam? Is it the same 4,000 barrels, or not?

A. 2,020 barrels of this 4,000.

Q. Of the 4,000 booked on November 25?

A. Yes.

The COURT.—I don't understand clearly what this is all about.

Mr. GRAHAM.—The situation is this, your Honor. Mr. Mannon put in evidence the original letter of November 25, 1919. He also asked the witness Hooper whether or not they had, in fact,

obligated themselves to carry 4,000 barrels to Rotterdam on November 25, and if it was not a fact that their advertisement in "The Guide" began on December 3. I merely want to show to your Honor that if the letter of November 25 ever was a contract, that that was subsequently altered by a later letter on December 16th, showing that this could not have been the contract.

Mr. MANNON.—I think the situation is this, isn't it, Mr. Graham, that, as has been testified, they make the arrangements or negotiations for space and then after that they have what they call firm bookings; those firm bookings they confirm by letter. Afterwards *the* put the goods on board and issue bills of lading. These particular documents that are here, as I understand it, are the space engagements.

Mr. GRAHAM.—Yes, that is substantially it, and that they are not firm contracts in any sense of the word.

Mr. MANNON.—With regard to whether they are firm contracts, or not, we will contend they are, and I suppose opposing counsel will probably contend they are not. At any rate, the part they [419] play is either in making a written contract or a written option for space.

Mr. GRAHAM.—Q. Do you or do you not understand, Miss Olsen, that this is the firm contract, or is the firm contract represented by the bill of lading subsequently entered into?

(Testimony of Ethel Olsen.)

The COURT.—Her opinion on that would be unimportant, I think.

Mr. GRAHAM.—Except that she wrote the letters, your Honor.

A. The California Wine might have made an engagement for 4,000 barrels of wine on this steamer, and then they might have used a portion of that for different ports.

The COURT.—Q. This engagement was for 4,000 on what steamer? A. On the "West Aleta."

Q. And subsequently that was modified?

Mr. GRAHAM.—It was subsequently altered and reduced it to 2,000. Our proposition is that this original letter, which came out before the advertisement in "The Guide," is not a contract, at all, and never was. To show that it was not, here is an alteration—

The COURT.—Even if it were, it was modified by a subsequent arrangement.

Mr. GRAHAM.—Yes, your Honor.

Mr. MANNON.—Those two letters are all we have, Mr. Graham, have you any others?

Mr. GRAHAM.—No, I have not. As a matter of fact, I had great difficulty in locating those two. I called on you to produce the letters.

Mr. MANNON.—Except for those two letters in evidence, we haven't any others.

Mr. GRAHAM.—Now, as to these, I didn't intend to put them in.

Mr. MANNON.—I think it would be better to put them in to complete the file.

(Testimony of Ethel Olsen.)

Mr. GRAHAM.—Q. Are those your letters, Miss Olsen? A. Yes. [420]

Q. Both of them? A. Yes.

Mr. GRAHAM.—I offer in evidence a letter dated December 8th, to Rosenberg Bros. & Co., signed F. A. Hooper, and ask that it be marked Respondent's Exhibit "J."

I offer in evidence a letter addressed to Rosenberg Bros. & Co., dated December 10th, signed F. A. Hooper, and marked Respondent's Exhibit "K."

This letter of December 8th written to Messrs. Rosenberg Bros. & Co., and marked Respondent's Exhibit "J," reads as follows:

RESPONDENT'S EXHIBIT "J."

(Letter-head of Williams, Dimond & Co.)

"San Francisco December 8th, 1919.

"No. 500-EO.

"Messrs. Rosenberg Bros. & Co.,
334 California St.,
San Francisco.

"Attention, Mr. Higgins.

"Gentlemen:

"SS. 'WEST ALETA.'

"Referring to your favor of the 3*th* instant. file HRH,—this will confirm reservation of space for your account covering shipment of 500 tons of Rice or Beans to be forwarded from here to Hamburg on the above named steamer.

"We will advise you in due course as to when we

will commence issuing shipping permits and receiving cargo for this steamer.

"Thanking you for this business, and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.

"Managers & Operators.

"F. J. HOOPER, O.,

"General Freight Agent."

(The letter was marked Respondent's Exhibit "J.")

(The letter which was marked Respendent's Exhibit "K" reads as follows:)

RESPONDENT'S EXHIBIT "K."

(Letter-head of Williams, Dimond & Co.)

"San Francisco December 10th, 1919.

"No. 500–EO. [421]

"Messrs. Rosenberg Bros. & Co.,
334 California St.,
San Francisco.

"Gentlemen:

"SS. 'WEST ALETA.'

"This will confirm reservation of space for your account covering shipment of 250 tons of Rice and Beans to be forwarded from here to Hamburg on the above named steamer.

"We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

(Testimony of Ethel Olsen.)

"Thanking you for this business, and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.

"Managers & Operators.

"F. A. HOOPER,

"General Freight Agent."

At this time I will ask you, Mr. Mannon, if you have any letters written to Rosenberg Bros. covering the Rotterdam cargo?

Mr. MANNON.—I don't think we have, but I will see in a moment; no, we have not.

Mr. GRAHAM.—Q. Do you know, Miss Olsen, whether any corresponding letters were written covering Rotterdam cargo shipped for Rosenberg Bros.? A. I think there must have been.

Q. From your answer and from this letter, it would show that Rosenberg Bros. knew that the vessel was going to Hamburg and Rotterdam; do you recall any conversation had with Mr. Higgins, or with anybody in Rosenberg Bros. relative to which one of these two ports would be called at first, or as to the route the vessel was going?

A. I am afraid I could not answer that definitely.

Q. You could not say whether you did or not?

A. No.

Q. Do you remember what your general custom as to notifying Rosenberg Bros. was at that time?

Mr. MANNON.—We object to that on the ground that it is immaterial. It is not possible to prove

(Testimony of Ethel Olsen.)

what her general custom was [422] by a particular telephone conversation.

Mr. GRAHAM.—I am merely trying to show the method of transacting business with Rosenberg Bros.

The COURT.—You have shown what the custom of the office was, but not with any particular customer. I will overrule the objection.

A. If we put a steamer on the berth the principal shippers were always telephoned to before circulars were sent out, advising them of the prospective steamer, and they were always told definitely what the itinerary of the boat would be; they were told that in connection with every reservation they would make on that steamer.

Mr. GRAHAM.—Q. In that class of large customers which you have named, would you or would you not name the California Wine Association, Rosenberg Bros., and S. L. Jones?

A. Those were three of our largest shippers.

Cross-examination.

Mr. MANNON.—Q. Miss Olsen, this European-Pacific Line, co-called was originally advertised on June 6, 1919, wasn't it?

The COURT.—Just let me ask a question.

Q. You mean, then, that because that was your custom you are satisfied that in this instance you notified Rosenberg Bros. & Co.?

A. Yes, all our shippers were notified as to the itinerary of our steamers.

(Testimony of Ethel Olsen.)

The COURT.—Now, Mr. Mannon, you may proceed.

Mr. MANNON.—Mr. Reporter, will you read the question?

(Question read by the Reporter.)

A. About.

Q. About that time?

A. About that time. I don't know the date, exactly.

Q. That is correct, as nearly as you can recollect?

A. Yes, sir.

Q. You were working with Mr. Hooper, were you? A. Yes.

Q. When did you go to work with him, if you remember? [423]

A. The latter part of 1915.

Q. And then did you work with him right along after that time? A. Yes.

Q. You are not employed by Mr. Hooper now, are you? A. Not since he went south.

Q. Your residence is in San Francisco?

A. Yes.

Q. I take it that you cannot remember now any of these conversations particularly?

A. Not in connection with any particular shipment.

Q. That is to say, it has been a matter of four or five years ago, and you have had a great many telephone communications? A. Yes.

Q. And among the people you dealt with were Mr.

(Testimony of Ethel Olsen.)

Higgins, of Rosenbergs, and Mr. Jenks of the California Wine? A. Yes.

Q. With regard to the itinerary which you may or may not have given out, I suppose you cannot now recall what the itinerary was, can you?

A. No, not as to any particular boat. I used to keep a memoradum on my desk as to each steamer en route, and the steamers on berths, and steamers to be put on berth. If I had a telephone conversation with any shipper, that was read right off to him. No port was spoken of. If they wanted to make a reservation about a certain port, we made it, but if they asked where the steamer was going, we always read it right off. That was the same itinerary that appeared in "The Guide."

Q. That itinerary was changed from time to time, wasn't it? A. Not on any steamer.

Q. I wanted to ask you first what you meant by when the boat was on the berth.

A. Sometimes we would be told by the Shipping Board that it would give us a steamer at a certain time to put on for European ports. We put that particular steamer on for the port where cargo was offering for. Then if it was definitely decided, and the steamer named, we would call that putting that boat on berth. [424]

Q. The first of these Shipping Board vessels that went into the European-Pacific Line went out of San Francisco in the month of August, 1919, didn't it? A. I should think about that time.

Q. That is about right, isn't it? A. Yes, sir.

(Testimony of Ethel Olsen.)

Q. Then you had one or two along in August, but then you didn't get well started until December, did you?

A. I could not answer that definitely. We had quite a few before we had a regular service, I know.

Q. With regard to the "West Aleta," do you remember where she went on her first trip?

A. No, I couldn't say.

Q. Do you remember where she was first intended for, according to this memorandum of yours, on her second trip out?

A. No, I could not answer that.

Q. I think she was lost on the second trip, is that your understanding?

A. Yes, she was; I think it was the second trip we handled her.

Q. As a matter of fact I think it was her second trip. I think she was launched just before her first trip. Is it not a fact, if I may refresh your recollection with regard to this second trip that she made out, that she was first intended for Cardiff and Rotterdam, and not for Hamburg at all?

A. I couldn't answer that.

Q. So that you don't know whether that is or is not true? A. No, I could not say.

Q. Your attention has been called here to two letters from you, or from Mr. Hooper, to Rosenberg & Co., confirming a reservation for 500 tons and for 250 tons for Hamburg; one is dated December 8, 1919, and the other one December 10. I want to ask you if the securing of that cargo for

(Testimony of Ethel Olsen.)

Hamburg was not the reason you changed the ship so that she could go to Hamburg?

A. I could not answer that, I don't know.

Q. That may have been the situation?

A. It may have been, or it [425] may not have been. It was very customary for them to change their reservations that way, not alone on the "West Aleta," but on all steamers.

Q. And when the change was made that had something to do with where the ship was going, that is, I mean when the change in the cargo was made? A. Not necessarily.

Q. Perhaps you are not familiar with these matters; I understood that the ship corrected her itinerary to places where she could get cargo, either home-bound or outbound: Do you know about that?

A. I could not answer that. I know they have made changes that were not for that reason.

Q. Speaking of the custom you had of doing business, you referred to some custom; that so-called custom could not have lasted any longer than the European-Pacific Line, in regard to that line, could it? A. No, it could not.

Q. So that if the line did not commence until some time about June, 1919, this custom or usage you refer to could not have lasted more than a few months; that is right, isn't it?

A. That lasted during the time we handled Shipping Board boats, and still lasts now.

Q. Are you still with Williams, Dimond & Co.?

A. No, I am with the American Hawaiian, but it

(Testimony of Ethel Olsen.)

is the same service. All bookings put out of Mr. Hooper's office were done in exactly the same manner. We were always very careful, particularly in the European trade, to tell the people where the various boats were going.

Q. And you had various ways of telling them?

A. Yes.

Q. One was by telephone service? A. Yes.

Q. Another was by advertising in the papers?

A. Yes.

Q. What papers were they?

A. We advertised in all the papers, but the only paper where we were very careful of the itinerary being in there was in "The Guide." [426]

Q. And another way you had was to send out circular letters?

A. Yes, we did on some steamers.

Redirect Examination.

Mr. GRAHAM.—Q. Mr. Mannon has spoken to you about "The Guide." I show you a copy of the advertisement in "The Guide" a day or so before the "West Aleta" sailed. You will note that it indicates Hamburg, Rotterdam, Cardiff; do you remember whether or not that is the notice you had upon your desk which you spoke about?

A. Yes.

Q. You do know that that is the notice which you informed the shippers about? A. Yes.

Recross-examination.

Mr. MANNON.—Q. You said that you were very careful about "The Guide"; you mean that you

(Testimony of Ethel Olsen.)

were careful about the advertisements you placed in "The Guide," so that they would give the itinerary of the ships? A. Yes.

Q. Those advertisements, however, were changed from time to time after the vessel was placed on the berth and before she sailed, weren't they?

A. If by any mishap or anything it was advertised incorrectly it would have been changed, and notice would have been given immediately.

Q. The reason I ask the question is that I have examined "The Guide" in many of these particulars; is it not a fact that the advertisement in "The Guide" from day to day showed various changes?

A. I should not think so, as to any particular boat.

Q. Is it not a fact also that the advertisements in "The Guide" do not accord with the places where the vessels went, in very many instances? Do you know anything about that?

A. Not with our steamers.

Mr. GRAHAM.—Q. If the advertisements in "The Guide" did not accord with the route the vessel took, and you had previously booked cargo, what would you do to notify the shippers, or would [427] you notify them?

A. I don't think we would have notified them, because we would have corrected the advertisement; most letters that we wrote, and I think some went to the California Wine Association and to Rosenberg, would give the itinerary of the boat in the confirmation of the space.

Q. You had a practice of doing that? A. Yes.

(Testimony of Ethel Olsen.)

Mr. MANNON.—We expect to introduce "The Guide" to show the various changes, and, therefore, I won't go over it with this witness. You will make no objection to the authenticity of the file of "The Guide" that we have here, Mr. Graham, will you?

Mr. GRAHAM.—No.

Mr. MANNON.—That is all with this witness.

Mr. GRAHAM.—If your Honor please, that concludes our case so far as the witnesses are concerned. I would like to read to your Honor at this time the answers to the interrogatories which were propounded to the various libelants in these cases. First I will read the interrogatories. They are, in their nature, the same in all of the libels.

The first interrogatory was: "Was any insurance carried upon the cargo?"

The second was: "If so, attach a copy."

The third was: "Has any insurance been paid on account of the loss or damage; if so, how much, and to whom were such payments made?"

The next one is: "Has any loan been made on account of the loss or damage; and if so, to whom have such loans been made?"

The answers are substantially the same in all of them.

"Yes, insurance was carried upon said cargo."

"The said insurance was carried by policies," giving the number, [428] stating the insurance company which carried the particular policy, and permitting the respondent to examine the original policies whenever it saw fit.

The answer to the third interrogatory is, "Yes, payment *have* been made on these policies."

The answer to the fourth interrogatory gives the total amount of payments made.

It is set forth in the stipulation of facts that the agreed values of this cargo at the time and place when it would have been delivered had the vessel not been lost, are certain sums, and those sums correspond exactly with the sums of money named in the answers to the interrogatories as the amounts of money which have been paid to the various libelants. It leaves the situation where the libelants here have received, under their insurance policies, full payment for their damage; that payment in each case has been made, not on loan receipts which are customary in a great many cases where there is any question of the liability of the insurance company, but these payments were made on full payment receipts.

If your Honor will bear with me, I will read what I deem to be pertinent points in the receipt or check which was made payable to the California Wine Association by the Fireman's Fund Insurance Company and the amounts as set out in the interrogatories.

Mr. MANNON.—That matter has been entirely covered. The libelants were fully insured in each instance, and have been paid in accordance with the damages here claimed.

Mr. GRAHAM.—I would like to put these policies, or the copies of the policies, in evidence, and also the checks under which the payments were

made, showing that there is no damage here to these libelants at all.

In the case of the California Wine Association the payment [429] was made by the Fireman's Fund Insurance Co. on June 2, 1920, in the sum of $642,871, and that the libel was brought by the California Wine Association against the Emergency Fleet Corporation in October, 1922, more than two years afterwards. May I be permitted to read this check?

The COURT.—You may read it.

Mr. GRAHAM.—(Reading:) "Pay to the order of California Wine Association Six Hundred Forty-two Thousand, Eight Hundred Seventy-one ($642,-871.00) Dollars, being in full settlement and satisfaction of all claims against said company for loss and damage by the steamship 'West Aleta' on the 12th day of February, 1920, under policy 641422."

In that respect, I offer in evidence as Respondent's Exhibit "L," a photostat copy of the original insurance policy covering the shipment of wine to Rotterdam and to Cardiff by the California Wine Association.

Mr. MANNON.—We object to that as immaterial. What possible basis can there be for putting in evidence here the insurance policies? We admit we were fully insured. The Shipping Board was likewise insured.

The COURT.—In view of that admission, I think you are unnecessarily encumbering the record.

We are entitled to have the policy to show what is on its face. This policy only covers the shipment

of wine to Cardiff and to Rotterdam; there were other shipments of wine on the manifest.

Mr. MANNON.—We make the same objection.

The COURT.—Objection overruled.

Mr. GRAHAM.—We introduce in evidence the check from the Fireman's Fund Insurance Co. as Respondent's Exhibit M. [430]

In the same respect, I offer in evidence the certificate of insurance, the open policies, carried by the firm of Rosenberg Bros. & Co. with the Fireman's Fund Insurance Co., together with the checks representing the payments made by the insurance companies in full settlement of their claims, as Respondent's Exhibit "N."

In the same respect—

Mr. MANNON.—It will be understood, your Honor, we have objected to all of these.

The COURT.—I will sustain the objection to all these policies; none of them will go in.

Mr. LILLICK.—Your Honor sustains the objection?

The COURT.—Yes, in view of the admission of counsel.

Mr. LILLICK.—May I address your Honor for a moment on that question?

The COURT.—Yes.

Mr. LILLICK.—The admission made by counsel for the other side does not go to the point which we are seeking to make, that when the insurance was taken out the insured knew that the vessel was going to these two ports, and in the order named in the policies, Rotterdam, Cardiff, which is the contention we are making in respect to notice.

The COURT.—If that is material, you can cover it by stipulation.

Mr. MANNON.—You can just read that portion of it.

The COURT.—In view of the stipulation, it is clear that these are immaterial.

Mr. GRAHAM.—The stipulation only covers the point that payments were made. I wanted to call attention to the fact that these were full payment certificates, and not loans.

Mr. MANNON.—We admit that. [431]

Mr. LILLICK.—That is stipulated to, is it?

Mr. MANNON.—Yes.

Mr. LILLICK.—Will you read into the record that portion of the policy as a part of your stipulaton?

Mr. MANNON.—It is stipulated that the policy reads, in part as follows:

"The FIREMAN'S FUND INSURANCE COMPANY in consideration of Eight Thousand Thirty Five and 90/100 . . . . Dollars premium, at and after the rate of Three Fourths & One Half . . . . per cent, and subject to the Conditions and Warranties specified herein and/or attached hereto, does by this Policy insure CALIFORNIA WINE ASSOCIATION as well in his or their own name as in that of those to whomsoever the subject matter of this Policy does or shall appertain, in the sum of Six Hundred Forty Two Thousand Eight Hundred Seventy One Dollars.

upon liquor, being:—

$456,955.—on 11,000 Barrels of Wine to Cardiff,

$120,493.—on 1,108 Barrels Brandy and 1250 Barrels Wine, to Rotterdam.

$ 65,423.— on 1742 Barrels Wine, to Rotterdam, marked:—Geneva.

Valued at sums insured

laden (under deck) on board the ship or vessel called the SS 'WEST ALETA' (lost or not lost) at and from Point San Pablo and San Francisco via Panama Canal to Rotterdam and Cardiff."

I also want to read this clause:

"Held covered, at a premium to be arranged, in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel, or voyage."

Mr. GRAHAM.—Have you read the policies covering the shipment to Hamburg? [432]

Mr. MANNON.—I don't think we have any policies that run to Hamburg, Mr. Graham.

Mr. GRAHAM.—I notice it was intended to cover to Hamburg.

Mr. MANNON.—There were five barrels of liquor that went to Hamburg, but I didn't see any policies on that.

M. GRAHAM.—So they were not covered on this?

Mr. MANNON.—No.

Mr. GRAHAM.—That is all.

Mr. MANNON.—We want the record to show that we have asked opposing counsel for documents which show, if there be such documents, that the ship "West Aleta" was insured against perils and losses caused by deviation, insured in the American Club. We will ask counsel to produce the documents

showing that she was so entered, the purpose being to show that the "West Aleta" appreciated that she might deviate, and took out insurance protection against the deviation.

Mr. GRAHAM.—If your Honor please, if there are any such records in existence, we have no knowledge of them. It may be a fact that the "West Aleta" was insured in the Club at the time she was lost against deviation. I don't know anything about it at all. I will have to look up the record. It is a fact, however, that in this particular instance that if the Court holds the "West Aleta" liable for deviation and subsequent loss, the payment of that loss will come out of the funds of the Emergency Fleet Corporation. Whether or not it was insured at that time, I do not know.

Mr. MANNON.—We would ask counsel to ascertain, and either produce the papers, or give the stipulation. We understand it to be the fact that she was entered in the American Club, and insured against this particular class of liability.

I take it, if your Honor please, that at this time you would [433] not care to hear argument on a motion for nonsuit, or a dismissal. I withdraw that suggestion for a moment. I was going to ask for judgment on the evidence as the case has been so far made, because there has been no competent evidence introduced to vary the written contract contained in the bill of lading. I take it your Honor does not care to hear argument on that motion?

The COURT.—You submit the motion, do you?

Mr. MANNON.—Yes, your Honor.

The COURT.—Motion denied.

Mr. MANNON.—If your Honor please, it has been testified here that there were certain voyages made by this ship. Mr. Hooper has given all of the voyages. Then we heard testimony for three or four days that these voyages were advertised in "The Guide." The defense has been predicated upon the advertisement in "The Guide." We now desire to offer the evidence from the "The Guide," itself, showing that the voyages as testified to by Mr. Hooper do not accord with the voyages as advertised in "The Guide." It will take some little time to go through this file. It will be necessary to identify this file.

Mr. LILLICK.—We will stipulate that the copies that you are here producing are copies of "The Guide." I think we might simplify the record by that stipulation going still further, and you and I can read it into the record, if you care to do it, that on such and such a day, giving it, a steamer was advertised in "The Guide" of that issue to proceed to and touch at certain ports as mentioned here.

Mr. MANNON.—I think that is an excellent suggestion, your Honor, but in view of the fact that the Court has heard the other evidence, I would want the Court to hear this evidence.

Mr. LILLICK.—I have no desire at all to cut you short, Mr. Mannon, but it seems to me that you can read it and in that way [434] have it in much simpler form.

Mr. MANNON.—Your Honor, it will take some time to go through this file. I believe we can save a great deal of time if we can get together and from this file make up a tabulation and present it here.

The COURT.—Yes, I think so. The case will stand over now until Monday, January 5, 1925, at ten o'clock A. M.

(An adjournment was here taken until Monday, January 5, 1925, at ten o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [435]

Tuesday, January 6, 1925.

Mr. MANNON.—If your Honor please, after the last recess counsel examined the file of "The Guide" together, and we are now able to stipulate that the fiirst advertisement of this European-Pacific Line here in the "The Guide" was under date of June 7, 1919. We have prepared and I will offer in evidence this list of advertisements in "The Guide," showing the advertisement of nine vessels, being all of the vessels of the European-Pacific Line there advertised prior to the time the "West Aleta" sailed. I ask that that be marked Libelant's Exhibit the next in order.

(The document was here marked Libelant's Exhibit 18.)

It may be of interest to the Court to know the materiality of this list. We have been taking some evidence here in regard to advertising custom. This list shows that of the nine vessels that sailed before the "West Aleta" sailed, six of them did not go as advertised in "The Guide," and three

of them did go as advertised in "The Guide" finally. We are offering this in evidence in connection with the evidence regarding custom and usage.

I want to put in merely two copies of the advertisement. The first one that I will offer appeared in "The Guide" as of June 23, 1919. I will offer that in evidence and ask that it be marked Libelant's Exhibit 19. I offer this merely to show the form of the advertisement.

Mr. GRAHAM.—That is offered in connection with the other exhibit to show changes from the actual advertised route?

Mr. MANNON.—Yes. The first one is dated June 23, 1919; the next one is the advertisement from "The Guide" under date of July 17, 1919.

(The documents were here marked, respectively, Libelant's [436] Exhibits 19 and 20.)

I think the Court fully understands our position that parol evidence is not admissible to prove any custom, or to prove any knowledge which in anywise affects the bills of lading. I would like it understood that in introducing the evidence that I am introducing in rebuttal, I am doing so merely because it is rebuttal, and not because we consider it relevant evidence otherwise.

The COURT.—Yes, I think that is fully understood.

TESTIMONY OF J. S. JENKS, FOR LIBELANT (IN REBUTTAL).

J. S. JENKS, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. Mr. Jenks, your name is J. S. Jenks? A. J. S. Jenks.

Q. What is your occupation?

A. At the present time I am general western agent of the Belt Railway Co. in Chicago.

Q. What was your occupation in 1919 and 1920?

A. I was manager of the California Dispatch Line, a tank-car company belonging entirely to the California Wine Association.

Q. And in that capacity what, if anything, did you have to do with the space engagements and the traffic business of the California Wine Association?

A. I was ex-officio manager of the California Wine Association's traffic.

Q. What, if anything, did you have to do with shipments of wine, and brandy to Cardiff and to Rotterdam, which were shipped on the "West Aleta," at the time when she was wrecked?

A. I secured the space.

Q. What did you have to do with five barrels of wine and brandy which were on the "West Aleta" destined for Hamburg when she was wrecked? A. Nothing. [437]

Q. With whom were your negotiations carried on?

(Testimony of J. S. Jenks.)

A. With Mr. Hooper, of Williams, Dimond & Co.

Q. That was the Mr. Hooper who had to do with the European-Pacific Line? A. Yes, sir.

Q. What conversation, if any, did you have with Mr. Hooper concerning the order of the ports of call of the "West Aleta" on this voyage?

A. None.

Q. What conversation, if any, did you have with Mr. Hooper concerning the vessel going to Hamburg, or going to Cardiff, or to Rotterdam?

A. None.

Q. When did you first learn that the vessel was intended or was destined to Hamburg before going to either Cardiff or Rotterdam?

A. When she was wrecked.

Q. I wanted to find out what experience you had had in the traffic business, Mr. Jenks.

A. I entered the Southern Pacific Co. in the year 1886, down at the local freight office, in San Francisco; later on I went to the San Francisco and San Joaquin Valley R. R.; then into the general freight department of the Southern Pacific; later I became traffic manager of the California Fruit Canners Association. Then I was away for a whole year, and came back here and acted as traffic manager for various firms, until 1915, when I was appointed manager of the California Dispatch Line.

Q. So that all of your business career has had to do with traffic? A. Traffic, yes.

(Testimony of J. S. Jenks.)

Q. With regard to ocean traffic, are you able to state what is considered as constituting the contract for the carriage of goods?

A. The bill of lading.

Q. And what is the last document that is executed between the shipper and the common carrier? A. The bill of lading.

Q. We have had some testimony here concerning custom; it appears [438] here that the forms of bill of lading that were used included this language, this being the so-called deviation clause or liberty-to-call clause: "And to touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports more than once."

Will you state whether there is any custom, to your knowledge, in the port of San Francisco or anywhere else, about what those words mean?

A. They mean whatever has been interpreted by the law.

Q. Do you know of any custom of interpreting that clause in connection with advertisements?

A. I certainly do not.

Q. Do you know of any custom of interpreting bills of lading in connection with advertisements?

A. No.

Q. So far as you have observed, what reliance, if any, is placed upon advertisements as a part of the contract of carriage of goods by sea out of the port of San Francisco, or out of any other port, to your knowledge? A. None at all.

(Testimony of J. S. Jenks.)

Q. There has been some testimony here about the meaning of the word "via" in connection with bills of lading. I note in this bill of lading, in paragraph 19, it reads: "Also in case the shipment hereunder is made from any port on the Pacific Coast to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal, or Straits of Magellan, or Cape Horn, or as heretofore set forth, to transship." What does the word "via" mean there, so far as you know, in connection with traffic via Panama Canal? A. "Via" means the route.

Q. Does that mean transshipment, so far as you know, at the Panama Canal?

A. Transshipment, no.

Q. There has been some testimony here that the use of the word "via" means transshipment point; you say it does not mean that? [439]

A. No, it does not.

The COURT.—Q. You mean it is not regarded in the shipping business as meaning "transshipment"? A. No, it is not.

Mr. MANNON.—Q. With regard to the engagement of space for ocean shipments, will you state to the Court, very briefly, what the usual method of doing that, so far as your practice is concerned, is?

A. At that particular time we had to find steamers to transship a large quantity of wine to Cardiff, or Swansea, and also to Rotterdam, and I was asked to find vessels that would be willing

(Testimony of J. S. Jenks.)

to take the cargo. After negotiations with several different steamship agents, Williams, Dimond & Co. said they would have the "West Aleta" on the berth, and would accept this quantity of wine for Cardiff—wine and brandy, I don't know the exact proportions—for Cardiff and Rotterdam. So we made the engagement for that steamer for the quantity specified in the confirmation.

Q. Those various negotiations, I take it, were oral?

A. Oral, or by telephone; mostly by visits.

The COURT.—Q. Had you seen the advertisement in "The Guide"?

A. The advertisement, to my memory, was not inserted until—until after we had made a space engagement for Cardiff, or Swansea, because, as I recall the transactions and general business of shipping from San Francisco, Cardiff is not a usual port of call for vessels going to the United Kingdom. So we offered the cargo for Cardiff and that enabled them to advertise the space for Cardiff; that is my memory of it.

Mr. MANNON.—Q. I call your attention to Libelant's Exhibit No. 12, a letter, which is dated November 25, 1919, and ask you if you recognize that letter as something that passed through your hands? A. Yes. [440]

Q. State to the Court what it is.

A. It confirms a reservation for 10,000 barrels of wine from San Francisco Bay to Cardiff on the "West Aleta."

(Testimony of J. S. Jenks.)

Q. That has to do with the very reservation that you mentioned?

A. The very reservation that I made. Also 4,000 barrels to be forwarded from San Francisco Bay to Rotterdam on the same steamer. There were some changes made in the space afterwards for both points, but that is not material.

Q. I show you this letter of December 16, 1919, being Respondent's Exhibit "I," addressed to the California Wine Association by Williams, Dimond & Co., and ask you if you recognize that document? A. I do.

Q. State to the Court the part that played in this transaction?

A. This confirms space for 2,000 barrels of wine to be forwarded from San Francisco Bay to Rotterdam on the "West Aleta" as per telephone conversation.

The COURT.—Q. Two thousand barrels for Rotterdam? A. For Rotterdam.

Q. Was there that much shipped on the "West Aleta"? A. Yes, there was.

Q. To Rotterdam?

A. To Rotterdam. There were 2,000 barrels of wine previously booked on the steamer which had been transferred for transshipment on the steamer "Cockaponset"; this leaves a total of 4,100 barrels to be forwarded from San Francisco Bay to Rotterdam on the "West Aleta."

Mr. MANNON.—Q. As far as your recollection serves you, are there any other space engage-

(Testimony of J. S. Jenks.)

ments on the "West Aleta" by the California Wine Association for Cardiff or for Rotterdam, than those?

A. That is all that I know of, those two ports.

Cross-examination.

Mr. GRAHAM.—Q. You state you didn't have anything to do with [441] any shipment of wine to Hamburg; who did handle that, if you know?

A. That was, in all probability, handled by the Shipping Department. It was not handled through my office, as far as I can remember. It being a very small shipment, the Shipping Department may have handled it after knowing that the boat expected at some time or other to go to Hamburg, and asked them if they could accept a shipment of five barrels.

Q. Did you have two departments?

A. We had a traffic department and we had a shipping department. The Shipping Department attended to the details, and I attended to securing the necessary space.

Q. So you did not handle all of it?

A. I booked the space for these large shipments. The Hamburg matter I didn't have anything to do with, so far as I know; I am quite sure I did not.

Q. Who was Mr. Barricks?

A. He was the shipping clerk.

Q. He was not in your department? A. No.

(Testimony of J. S. Jenks.)

Q. He had nothing at all to do with your department? A. No.

Q. Who was his superior, if you know?

A. Every department of every large concern works more or less together; he took his instructions, in acting as shipping clerk, from the general manager, Mr. Morrow.

Q. Am I correct in understanding you to say you did not have any conversations with Mr. Hooper relative to the routing of this vessel?

A. None at all.

Q. You knew she was going to more ports than to Cardiff, didn't you?

A. I naturally assumed that, yes, because we had already made space on her for Rotterdam, when we found that she was going to Rotterdam.

Q. So you doubtless knew she was going to Rotterdam and to Cardiff; did you know that she was going to any other ports?

A. No, I did not. [442]

Q. Did you know that this vessel was engaged in the general European-Pacific service by Williams, Dimond & Co. at that time?

A. Well, I knew that she might have been engaged as part of what Williams, Dimond & Co. were starting as a European-Pacific Coast ports steamer line, but it didn't make any impression on me at the time, because I was concerned in getting the cargo to Cardiff, or Swansea, and to Rotterdam.

Q. Weren't you concerned in getting the cargo

(Testimony of J. S. Jenks.)

out of the United States, rather than getting it to any one port in Europe?

A. No, it was to Cardiff; the agents of the company in London found that Cardiff or Swansea were the only places that could handle such a large shipment as we did make on all the different boats, and asked us if the steamers would take the cargo for Cardiff.

Q. So you were just shipping to Cardiff or Swansea at that time? A. That is all.

Q. How about later on?

A. I have an idea that the last boat that was allowed to leave this port had to be out of San Francisco the day before prohibition became effective.

Q. When was that, if you know.

A. I fancy it was some time in January, 1920, although I am not sure.

Q. Do you remember the "Xenia"?

A. Yes, we loaded here.

Q. How much did you put on her?

A. I don't remember.

Q. You don't remember what it was? A. No.

Q. Do you know where she went?

A. I don't remember what the bill of lading said.

Q. You don't remember where she was to go?

A. No.

Q. Before the time of this letter of November 25, before that letter was written I suppose, of course, you had some negotiations with Mr. Hooper relative to this booking, had you not? [443]

(Testimony of J. S. Jenks.)

A. Oh, yes, I had conversations with several agents of the different steamers.

Q. And among them was Mr. Hooper?

A. And among them was Mr. Hooper.

Q. Do you remember what the nature of that conversation was? Did he come and tell you that he had a ship on the berth for Cardiff?

A. No, sir; I went to him and asked him if he could take freight for Cardiff.

Q. You went and asked him? A. Yes.

Q. How did you happen to pick on Williams, Dimond & Co.?

A. Mr. Hooper was a good friend of mine, and I knew they had vessels loading for various ports, the same as Evans had, and that Balfour-Guthrie had.

Q. Did you have some dealings with Balfour-Guthrie?

A. We had dealings with Balfour-Guthrie in connection with a boat that left here to take freight to Cardiff. We had to get over 40,000 barrels out, and we had to scurry around to find vessels that would take it.

Q. So your concern was getting wine out before prohibition became effective? A. Yes.

Q. And it was concerned to get it on any boat that would take the goods for you to Europe?

A. To take them to Cardiff.

Q. All your goods went to Cardiff?

A. To Cardiff or Swansea.

Q. And no place else? A. Not in England.

(Testimony of J. S. Jenks.)

Q. How about Continental ports?

A. We had 4,000 barrels on this boat for Rotterdam. Whether we had any more on any other boats or not, I don't remember.

Q. You don't remember any other boat?

A. No.

Q. This letter of November 25, do you remember having any conversations with Mr. Hooper before that letter was written?

A. I probably did have. The letter could not have come out of a [444] clear sky. It says, "This concerns reservations," so I must have had conversation with him about it.

Q. So this letter is really the culmination of your previous conversations? A. Yes.

Q. Most of your business was over the phone, was it? A. No, probably it was by calling.

Q. Either he on you, or you on him?

A. Yes.

Q. Would you positively state that Mr. Hooper had not told you the route the "West Aleta" was going to take at any time?

A. If he mentioned the various ports the vessel was going to take, it made no impression on my mind that that was the order of the ports of call.

Q. So you cannot positively say that Mr. Hooper did not tell you that the "West Aleta" was going here or there?

A. I can positively say that he never used the expression that the vessel would make the ports in the order of ports of call.

(Testimony of J. S. Jenks.)

Q. He did not mention the order of ports of call at all? A. No.

Q. Did he mention that the vessel was going to Hamburg, Rotterdam, Cardiff?

A. He might have, but in what order I cannot say.

Q. You would not say that?

A. I would not say that he did not say those ports, but I can say positively he did not say it as the order of ports of call.

Q. So you didn't know before the vessel sailed that she was going to Hamburg, Rotterdam and Cardiff in that order? A. I didn't know that.

Q. Did you take "The Guide" at that time?

A. Yes, we took "The Guide."

Q. Did you use it at that time?

A. I paid no attention to "The Guide" at all.

Q. You didn't follow it at all?

A. No, I didn't follow it at all. [445]

Q. Was it in your office? A. No, it was not.

Q. It was not in your office, at all?

A. No, it was not in my own office; it was in the office of the company.

Q. I mean your own office. So you don't know the purpose for which it was taken?

A. Everybody took "The Guide" for the purposes of all kinds of shipping.

Q. Shipping information?

A. Shipping information.

Q. In general, giving routes and ranges of service, and the names of ships?

(Testimony of J. S. Jenks.)

A. It was generally referred to, particularly by the shipping department, to know what day a boat was going to sail, and the day she was going to receive freight. That is about all the information necessary in any office that takes "The Guide," what day the boat is going to accept freight, and what day she is going to sail.

Q. You find that out from "The Guide"?

A. Yes.

Q. If you have some goods to ship to the continent, or to England, you go to "The Guide" to get the information as to when she is going to sail?

A. Or any other port anywhere else.

Q. So you would use "The Guide" for those purposes?

A. Any shipper uses "The Guide" to know what day he has to get his freight ready to go forward.

Q. You spoke a few moments ago about the bill of sale being the contract; I am going to show you here something that you are undoubtedly very familiar with already. That is the Shipping Board bill of lading. You will notice it says, "From San Francisco to Koln, Germany." What is your understanding as to the exclusiveness of that bill of lading as the contract of carriage to Koln? Are the goods going direct to Koln, or what would be your understanding?

A. The way that bill of lading is made out, the destination, so far as the bill of lading is concerned, is Hamburg. [446]

(Testimony of J. S. Jenks.)

Q. How would you tell that—from the bill of lading, itself?

A. The bill of lading says "Hamburg."

Q. It says that up at the top?

A. Yes, unto the port of Hamburg.

Q. If you got a bill of lading like that and it had on it "San Francisco to Hamburg," your idea would be that the vessel was going right straight across to Hamburg, would it? A. No.

Q. What would your idea be?

A. My idea would be that the vessel would be very glad to get rid of the largest portion of her cargo first.

Q. Have you had much experience with ocean shipments?

The COURT.—Q. Let me ask you a question right here. In that particular bill of lading there is only one foreign port mentioned.

Mr. GRAHAM.—Yes, your Honor, one foreign port.

The COURT.—"From San Francisco to Hamburg."

Mr. GRAHAM.—Yes, your Honor.

The COURT.—Q. Wouldn't you think that was the only port she was going to make from San Francisco?

A. Oh, no, Judge, the bill of lading covers each specific consignment on the boat. We had bills of lading covering 10,000 and more barrels for Cardiff that says "Cardiff."

Mr. GRAHAM.—Q. If you had another bill of

(Testimony of J. S. Jenks.)

lading which read from San Francisco to Rotterdam, like this one, for instance, reads—here is another one of your shipments—that reads to Rotterdam, doesn't it?

A. Yes, that reads to Rotterdam.

Q. Where is one San Francisco to Cardiff?

A. Yes.

Q. You have three bills of lading there; what would your idea be as to where the vessel was going?

The COURT.—The three bills of lading represent shipments on the same ship?

Mr. GRAHAM.—Shipments on the same shipped, shipped by the [447] California Wine Association to three different ports, Cardiff, Rotterdam, Hamburg.

Q. What would be your idea as to how that vessel was going—I mean just from the bill of lading, itself?

The COURT.—Of course, it is understood that this is what would be his idea as to the ports she would touch, or the order in which she would touch them, according to the custom at that time.

Mr. GRAHAM.—Yes, your Honor, according to the custom at that time.

A. I cannot see that I could ever say that there was anything in connection with any custom. The cargo we had on the boat was pretty near half of the cargo for Cardiff, if not more—I don't know the exact measurement of the cargo, but by weight alone it would be about half of the steamer's capacity.

Q. I think it has been stipulated here, Mr. Jenks,

(Testimony of J. S. Jenks.)

that she had about 2,600 tons for Cardiff, and I think all of it was yours, or approximately yours. Is that about correct, Mr. Mannon?

Mr. MANNON.—That is approximately correct.

A. The only reason there might be other cargo to Cardiff—I know we engaged the space to Cardiff; Cardiff is not a regular port of call, ordinarily, from San Francisco.

Mr. GRAHAM.—Q. Did you know what her regular ports of call were at that time.

A. I did not.

Q. You didn't know what the range of this European-Pacific service was?

A. I beg your pardon, what is that?

Q. I say you didn't know what the range of this European-Pacific service was, what the range of ports was? A. No.

Q. You did know that she went to other ports than Cardiff?

A. Oh, yes. She went to Cardiff because we asked them if they could take this to Cardiff. [448]

Q. And you have already seen that she had some for Rotterdam? A. Yes.

Q. I showed you that bill of lading. A. Yes.

Q. And some for Hamburg?

A. A very small portion for Hamburg.

Q. So your office knew she was going to Cardiff, Rotterdam and Hamburg?

A. I didn't know it through the bills of lading, but I knew incidentally that she was going to those three ports.

(Testimony of J. S. Jenks.)

Q. Again I will ask you, taking these three bills of lading which I understand you to testify to represent the contract of carriage, and showing you that they are to three different ports, what would you say would be the customary route of that vessel?

A. To the nearest geographical port.

Q. Have you had any experience in water shipments, shipments by sea?

A. In all my various traffic experience I have made reservations at various times for shipments by water.

Q. And always the shipments that you made by water went to the first geographical port?

A. I would not say that.

Q. So you would say, would you, that you have had some experience where vessels did not call at the first geographical port?

A. I would not say I had that experience. My experience would be to secure the space for the port I wanted.

Q. And you were not concerned with how the vessel went, so long as she got to the port that you wanted in reasonable time?

A. Well, I think whatever I may have thought in the past was entirely different in this particular instance; we wanted the cargo at the ports as soon as possible.

Q. You did?

A. We had a great deal of money involved. We wanted to get all the freight to Cardiff or Swansea

(Testimony of J. S. Jenks.)

and have it properly sorted. We had a selling campaign on previous to the arrival of the cargo.

Q. Had you sold this cargo?

A. I do not know that we had sold this. [449] I don't know anything about the sales end at all. Our agents naturally knew this was coming, and their natural plan would be to try to sell it as quickly as possible.

Q. So you are not familiar with whether or not any of this wine which you sent over at that time was sold?

A. It certainly would not have been sent there unless it had been expected that it would be sold.

Q. But you cannot say that any of it was sold when it was shipped?

A. I don't think any of it was sold before shipment. It was not intended to send 40,000 odd barrels to England without the intention of selling it as fast as possible; there was too much money involved in it.

Q. I appreciate that. You were thoroughly covered by insurance, weren't you?

Mr. MANNON.—That is objected to as immaterial. It is admitted.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. You cannot testify, can you, as to whether any of this was sold?

A. I had nothing to do with the selling end at all.

Q. As I understand you, you have had a lot of experience in shipments by rail. You were connected with the Southern Pacific Co. The company

(Testimony of J. S. Jenks.)

with which you are now connected is mostly interested in rail shipments, is it not? A. Yes.

Q. Can you name specifically any experience you have had with shipments to Europe, before the sailing of the "West Aleta"?

A. I cannot say that I ever took out any space engagements for any companies out of the port of New York on shipments moving rail to New York. Of course, I knew that such export bills of lading were taken out.

Q. As to shipments by water out of San Francisco during the [450] time that you have been testifying to, had you had any experience previous to the sailing of the "West Aleta" or previous to the booking of cargo on the "West Aleta" as to water shipments to Europe, or to England, of wine?

A. Not of wine, no.

Q. Not a bit?

A. Oh, I can't say that I didn't have a bit; I may have reserved space for some shipments.

Q. You don't remember?

A. I don't remember that; it is a good many years ago.

Q. How about other commodities? Did you have any experience in water shipments of other commodities from the Pacific Coast to Europe? I mean shipments like the "West Aleta" shipments. You were not in that business generally, were you?

A. It is so many years ago that I cannot say I actually engaged space for the people I was employed by, or not.

(Testimony of J. S. Jenks.)

Q. But most of your experience was experience along rail lines, wasn't it? That is right, isn't it?

A. When I was with the California Fruit Canners Association it was not entirely rail lines.

Q. Where did you make any ocean shipments for them?

A. Oh, that is too many years ago to remember.

Q. Where were they shipping from?

A. If they shipped by water they shipped from San Francisco Bay.

Q. Were you doing a European business at that time, do you remember? A. I cannot remember.

Q. How long ago was that?

A. That was from 1900 to 1908.

Q. After you left them who did you go with then?

A. I did traffic work from 1911 until 1915, in San Francisco; I was doing traffic work for various firms.

Q. That is, you were employed in their traffic departments? A. Part time, yes.

Q. What were some of those firms? [451]

The COURT.—What is the object of this?

Mr. GRAHAM.—I am trying to show that Mr. Jenks is not very familiar with the custom of shipment in the European-Pacific trade. He has just testified, your Honor—

The COURT.—Mr. Jenks has said so in so many words.

Mr. GRAHAM.—Very well, your Honor.

Q. So you cannot say whether it was customary on water shipments from the Pacific Coast to Eu-

(Testimony of J. S. Jenks.)

rope to ship the most direct geographical way, can you?

A. I think it is the expectation of the shipper to get his goods to market as fast as possible.

Mr. GRAHAM.—I move to strike that out, your Honor, as not an answer to the question.

The COURT.—The question asks you for the custom. The motion to strike is granted. Can you answer the question, Mr. Jenks?

A. My answer would be that most shippers expect to get their goods to destination as soon as possible, so as to get their money.

Mr. GRAHAM.—I move to strike that out. I wish you would confine yourself to answering the question, Mr. Jenks.

The COURT.—The question is, Do you know what the custom was in reference to that.

A. Well, I cannot help but think that any shipper—

Q. That is your individual view. You don't know what the custom was, or do you?

A. I cannot say that it is a custom, at all.

Mr. GRAHAM.—Q. You testified further, Mr. Jenks, to this bill of lading being the contract. Not having had much experience in water shipments from San Francisco to Europe in those times, or even previous times, you cannot say that a bill of lading reading San Francisco to Cardiff necessarily imports a contract to carry the goods direct from San Francisco to Cardiff, can you?

(Testimony of J. S. Jenks.)

A. Except whatever the law requires in connection with the transportation. [452]

Q. Are you familiar with the law, as to what is required in connection with transportation by water?

A. No, I am not a lawyer.

Q. So you are not familiar with the law?

A. I am not familiar with decisions that may have been given at various times in connection with the interpretation of bills of lading.

Q. So the legal interpretation of the bill of lading you don't know much about: That is a fact, isn't it?

A. That is a fact, yes.

Q. And as to the bill of lading being the contract of carriage, and just what your contract of carriage is under an ocean bill of lading, you are not too sure about that, either, are you?

A. I only know that it reads from one port to another, and the shipper expects it to be carried out in accordance with the interpretation the Courts have given to the bill of lading.

Mr. GRAHAM.—I move to strike out the entire answer as not responsive to the question.

The COURT.—Motion denied. That answer cannot do anybody any harm.

Mr. GRAHAM.—Q. Do you know the interpretation the courts have given to these bills of lading?

The COURT.—That is unimportant. This Court will be governed by this bill of lading if it is in itself clear when I come to examine it; I have repeatedly said that if it is not clear, if it is ambiguous, then I will be governed, of course, to some

(Testimony of J. S. Jenks.)

extent, by the custom and the practical construction shippers have given this particular provision of the bill of lading. Mr. Jenks says he is not acquainted with the custom, if there was any custom.

Mr. GRAHAM.—Q. You have spoken about the arrival of these goods in Europe; did you make any inquiry when the vessel was to arrive, or was expected to arrive at Cardiff and Rotterdam and Hamburg? A. No.

Q. You did not make any inquiry at all?

A. No. [453]

Q. So you didn't know whether she was going to go to Hamburg first, or to Cardiff first?

A. I only assumed she was going to Cardiff first.

Q. In looking at "The Guide" for the purpose of finding out when the vessel was going to sail, you, of course, looked at the ad of Williams, Dimond at that time, didn't you? That would be the natural thing to do, wouldn't it?

A. I don't think I looked at "The Guide." I had my advices from Williams, Dimond & Co. that they were accepting the cargo.

The COURT.—The witness has said that he thinks this advertisement was placed in "The Guide" after he had reserved space.

Mr. GRAHAM.—Yes, your Honor.

The COURT.—And he has testified that his recollection is that he was not governed by "The Guide" in making this reservation of space.

Mr. GRAHAM.—Yes, he testified to that concerning the reservation for 10,000 barrels on No-

(Testimony of J. S. Jenks.)

vember 25. It is a fact that the advertisement started in on December 4th—isn't that the date, Mr. Mannon?

Mr. MANNON.—I think it is December 4.

Mr. GRAHAM.—There is another letter making a further booking, which letter is in evidence, and dated December 16. That was after the advertisement started. The advertisement started on December 4. I want to ask him if he knows anything about the advertisement as of December 16.

Q. What is your recollection on that, Mr. Jenks?

A. I did not see "The Guide" at all.

Q. So you didn't pay any attention to the sailing date, so far as "The Guide's" information was concerned? A. No.

Q. Do you know how much money was involved in this shipment?

A. No. I do not. [454]

Q. You do not know what the cargo was worth?

A. No.

Q. You know it was pretty valuable, of course?

A. Most assuredly.

Q. Do I understand you to say that with a cargo as valuable as this that you didn't know when she was going to arrive at the other side, and didn't pay any attention to the route which she was following?

A. I had too much to do at that time to pay much attention to anything, except to get it out.

Q. So you wanted to get it out, and you didn't care where it went?

(Testimony of J. S. Jenks.)

A. I wanted to get it out of the way and get it to Cardiff as soon as possible.

Q. And yet you tell me you didn't pay any attention to the route she was going to travel?

A. My natural supposition was that the boat would naturally unload the largest portion of her cargo first.

Q. Have you ever had anything to do with the loading of the vessel? A. No.

Q. Have you ever had anything to do, previous to the "West Aleta," with shipping as large a quantity of wine as this?

A. No, and I don't think anybody ever had.

Q. So that you really cannot say that your supposition as to where it would go on the ship, and where it would be unloaded first, because it was large, was founded upon any customary acts on your part as shipper?

A. Well, I cannot say that; I cannot answer that that way. We offered cargo to an unusual port of call, because it was a very large cargo, and they accepted it for that port. That was the main portion of the cargo of the ship.

Q. But you knew, however, that the ship was full, or would be full of other cargo of other people, didn't you?

A. I couldn't say that, that I knew she was going to be full.

Q. What was your experience in those times, as to getting space [455] for shipments in that European service?

(Testimony of J. S. Jenks.)

A. I don't know anything about that.

Q. Didn't you just tell me—

A. I didn't understand that, I thought you meant about getting cargo for those ports.

Q. No, I mean about getting space for your cargo.

A. I had quite a time in getting space.

Q. So that would lead you to believe that those boats were going out full, wouldn't it?

Mr. MANNON.—That cannot be evidence, your Honor, in this case.

A. It was not a question of that; it was a question of getting a boat to take such a large cargo to that kind of a port.

Q. All your shipments were not large at that time, were they?

A. I know that we sent out 40,000 barrels at that time.

Q. But this shipment of 11,000 barrels was largely out of proportion to the size of your other shipments, wasn't it? A. I don't know about that.

Q. You don't remember whether the vessel was going out full or light, then, do you?

A. I was not concerned with whether she went full or light, so long as she went out the day before prohibition went into effect.

Q. So I say you don't know whether she went out full or light? A. I don't know it.

Q. And you have not had experience in loading such a large amount of wine on any vessel, either before or since, have you?

A. Certainly not since, and very little before.

(Testimony of J. S. Jenks.)

Q. So you cannot tell where that customarily ought to go in a ship for discharge, can you?

A. I don't know anything about loading cargo.

Q. And I suppose that applies to discharging cargo; you are not a steamship operator, and you don't know much about discharging a [456] vessel, do you? A. No.

Q. Mr. Mannon read you a clause from the bill of lading, "Via the Panama Canal." Of course, you and I appreciate that "via the Panama Canal" does not mean transshipment at the Panama Canal does it? A. No, it doesn't.

Q. Suppose you had "Via Hamburg," and you were shipping to Koln, what would you expect in that instance?

A. Hamburg would be the port of call. Koln is an interior point.

Q. Koln is a waterway, isn't it?

A. That I don't know.

Mr. MANNON.—Is it, Mr. Graham?

Mr. GRAHAM.—Yes, it is. It is on the Rhine River, leading directly to the ocean; ocean-going vessels go there.

Mr. MANNON.—It is not a port, is it?

Mr. GRAHAM.—Yes, it is.

Mr. MANNON.—Our understanding is that it is not a deep-water port, and that ocean-going vessels do not go there.

The WITNESS.—Cardiff is not a regular port of call from here, although it is a very deep-water port.

(Testimony of J. S. Jenks.)

Mr. GRAHAM.—Q. So in some cases "via" might mean transshipment?

A. No. The destination there was Hamburg. It was not via Hamburg; the bill of lading read Hamburg. If you had a shipment destined for Sacramento, here, and you wanted to ship it by water, you would ship it to Sacramento via San Francisco.

Q. Just the same as Koln via Hamburg?

A. Yes, just the same; it has to reach the port. Hamburg was the port of the bill of lading.

Q. This letter of December 16, relative to 2,000 barrels for Rotterdam; as I understand the situation, these bookings that were made in the letters to the California Wine Association were subject to change with the steamship operators, so that if you wanted to put on a little more and take off a little, or switch around the ports, you could; isn't that the fact? [457]

Mr. MANNON.—We object to the question as immaterial, and as calling for a legal conclusion. We think that those were space contracts.

The COURT.—I will permit the question.

A. My answer to that question would be that there was no intention of switching around the ports. There was evidently a question originally in the letter of November 25, 1919, there were 4,000 barrels reserved for Rotterdam; and then on December 16 we added 2,000 barrels, apparently—yes, we did; then in the letter of December 16, 1919, 2,000 of the 6,000 barrels—approximately 6,000 barrels—were transferred to another steamer, which left a total

of 4,100 barrels for the "West Aleta." There seems to be a difference of 100 barrels in there. There is a pencil notation in my handwriting on the letter of November 25, 1919, stating that 100 barrels had been added.

Mr. GRAHAM.—I think I understand the situation, Mr. Jenks. That leaves the situation where the November 25 letter is subject to your further negotiations and merely represents that you expect to have about 14,000 barrels of wine on the "West Aleta" for those two ports.

Mr. MANNON.—We object to that on the ground that it is immaterial, because the witness' supposition cannot control the contract.

The COURT.—I will sustain the objection.

Mr. GRAHAM.—Q. When you wrote these letters, you, of course, understood you were entering into a bill of lading which would be your contract, didn't you? A. Yes.

Mr. MANNON.—He didn't write these letters, they came to him.

Mr. GRAHAM.—Q. The letters are confirmation of your previous arrangements?

A. I don't know whether the arrangements were by correspondence or whether they were by personal conversation. [458] The only evidence submitted is that Williams-Dimond confirmed a reservation for 10,000.

Q. Have you any other letters, Mr. Jenks, written by you?

(Testimony of J. S. Jenks.)

A. I don't remember whether there were any letters, or not. There probably were not any letters.

Mr. MANNON.—I will state that those are the only letters that we have been able to get.

Mr. GRAHAM.—Q. Did you have any previous experience with the Shipping Board bill of lading, Mr. Jenks? A. I cannot remember.

Q. You do not know whether you did, or not?

A. No.

Q. How did you happen to know that the vessel was going to Rotterdam, do you remember that?

The COURT.—He has explained that. He said he was looking for space to send these goods away, and he knew Mr. Hooper, and called on Williams, Dimond & Co. I think you are re-covering the same ground.

Mr. GRAHAM.—Q. Were you familiar with the congestion in English ports at that time? A. No.

Q. You didn't know that the ports were congested? A. No, not at all.

Q. Will you state whether or not you were familiar with the practice of the European-Pacific Line of making the furthest port north on the continent first or last?

Mr. MANNON.—I object to the question as immaterial, because it now appears, according to the evidence stipulated here, that there could not be any custom on the part of the European-Pacific Line, its first sailing having only been three months before this transaction occurred.

The COURT.—I will overrule the objection.

(Testimony of J. S. Jenks.)

A. I knew nothing about it. [459]

The COURT.—That was bound to be his answer, in view of his previous testimony.

Mr. GRAHAM.—Q. Are you familiar with this deviation clause in the United States Shipping Board bill of lading? A. Not particularly so.

Q. Did you ever read it?

A. I do not know that I have ever read it before this cargo was accepted.

Q. Did you ever read it after the cargo was accepted? A. Not that I know of.

Q. So that you cannot say whether or not the ship, in this particular case, had a customary right to go in the order she did?

A. Only by the interpretation of the courts as to the bill of lading.

Q. As I understand it, you are not familiar with that interpretation.

A. I am not familiar with that interpretation.

The COURT.—He is not familiar with that, or with the custom under this clause.

Mr. GRAHAM.—Q. Did you handle the insurance for these shipments, Mr. Jenks?

A. Well, I would say we did, but I had nothing to do with taking out the insurance.

Q. You didn't have anything to do with it, yourself? A. No.

Q. And you don't know anything about it?

A. All I know is that naturally insurance was made, but I don't know anything about it.

(Testimony of J. S. Jenks.)

Q. Do you know whether the insurance has been paid?

A. I don't know anything about it, only I am assuming that there was insurance.

Q. Who handled the insurance for your company?

The COURT.—What difference does that make?

Mr. GRAHAM.—The stipulation shows that this is an insurance case, your Honor. The testimony shows that the California Wine Association, Rosenberg & Co., and S. L. Jones & Co. are not damaged [460] at all in this case, that they have been fully paid.

Mr. MANNON.—That is an unfair statement, Mr. Graham.

Mr. GRAHAM.—I beg your pardon, Mr. Mannon, I don't want to make any unfair statement.

The COURT.—Well, whether that was true, or not, it is unimportant now in the cross-examination of this witness.

Mr. GRAHAM.—I think that is all.

Redirect Examination.

Mr. MANNON.—Q. Mr. Jenks, I understand your testimony to be in regard to the stowage of wine and brandy on board ships, that you simply don't know anything about it, do you?

A. I don't know anything about it.

Q. In the course of your traffic experience, you have not dealt with the loading of cargoes on ships?

A. Not at all.

(Testimony of J. S. Jenks.)

Q. In regard to custom, and whether or not there is any custom, as to where boats are going under bills of lading, like the one that has been shown you, I understand your testimony to be simply that you don't know any custom about it?

A. I don't know any custom about it.

Mr. MANNON.—That is all.

TESTIMONY OF R. SCIARONI, FOR LIBELANT (IN REBUTTAL).

R. SCIARONI, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. Your business is in connection with the California Wine Association, is it not?

A. Yes.

Q. And was in 1919 and 1920? A. Yes.

Q. In what capacity in 1919 and 1920 were you employed by the California Wine Association?

A. As secretary.

Q. What, if anything, did you have to do with securing marine insurance at that time?

A. I placed all the insurance for the California Wine Association. [461]

Q. In that connection, did you have to do with placing insurance on the cargo on the "West Aleta"?

A. I did.

Q. I am referring now to her second trip, when she was wrecked. I will ask you what knowledge, if any, you had concerning the order of ports of call of the ship "West Aleta"?

(Testimony of R. Sciaroni.)

A. We had a cargo for both Cardiff and Rotterdam, and I naturally assumed, of course, that the cargo—

Mr. LILLICK.—Now, just a moment, Mr. Sciaroni. We ask that what the witness assumed, may it please the Court, be stricken out.

Mr. MANNON.—If your Honor please, before you rule on that, I understand there is an effort being made by opposing counsel to draw an inference from the insurance policy that the California Wine Association knew the order of ports of call of this vessel, that is, that the order of ports of call would be Hamburg, Rotterdam and Cardiff. This witness placed the insurance, had charge of it. We want to show that he had no knowledge acquired from any source whatsoever in that regard; in other words, we are endeavoring to prove a negative, so far as that is concerned.

The COURT.—But what he assumed would be incompetent. The objection is sustained.

Mr. MANNON.—Q. You cannot say what you assumed, Mr. Sciaroni. What knowledge, if any, did you have that this vessel, the "West Aleta," intended to go to Hamburg before she went to Rotterdam and Cardiff, or Cardiff, if you had any such knowledge?

A. I had no knowledge that she would go to Hamburg first.

Mr. MANNON.—That is all.

Cross-examination.

Mr. LILLICK.—Q. Had you seen the advertise-

(Testimony of R. Sciaroni.)

ment in "The Guide"? A. I had not.

Q. You knew nothing whatever about the proposed voyage of the 'West [462] Aleta" other than that you had cargo going on her to Rotterdam and Cardiff? A. That is all.

Q. How about the cargo that you had on her for Hamburg? A. I knew nothing about that.

Q. It was my understanding that you placed all of the insurance on the cargo taken on the "West Aleta" for the California Wine Association: That is not true?

A. Yes, I had charge of all the insurance. I arranged for the insurance with the Fireman's Fund for Cardiff and Rotterdam.

Q. And knew nothing about any cargo for Hamburg? A. Not until afterwards.

Q. What do you mean by "Not until afterwards"?

A. After the vessel had sailed; then it was reported to me that our sales department had taken two small orders for Hamburg.

Q. What did you do about the insurance on that?

A. When we made the final return for Cardiff and Rotterdam we also included the small amount for Hamburg.

Q. Then you did know that the vessel was going to Hamburg? A. After she had sailed.

Q. Then you qualify the testimony you gave on direct examination as to your knowledge by your knowledge on a certain day, and what you might have known on a succeeding day?

(Testimony of R. Sciaroni.)

A. I knew nothing about the shipment to Hamburg until after the vessel sailed.

Q. It was my understanding that you testified that you knew nothing about the voyage other than to Rotterdam and Cardiff; now on cross-examination you amplify that by saying that subsequently you learned that she was going to Hamburg: Is that correct?

Mr. MANNON.—I submit that that is not a statement of the witness' testimony. The testimony of the witness is, and I submit [463] the record will bear me out, that he had no knowledge concerning the order of ports of call, that is to say, he had no knowledge that the vessel was destined to Hamburg first.

The COURT.—I will overrule the objection.

A. My first impression about Hamburg was after the vessel was lost. That was the first knowledge that I had officially that we had some goods aboard for Hamburg.

Mr. LILLICK.—Q. And how long was that after the vessel sailed?

A. The vessel sailed, I think, in January, and this was late in February; I think it was late in February, or early in March.

Q. And you placed the insurance on the Hamburg shipment?

A. This small shipment for Hamburg was written out by a clerk in the office; it was only a few hundred dollars, whereas we were dealing here with hundreds of thousands of dollars.

(Testimony of R. Sciaroni.)

Q. I didn't ask you that, Mr. Sciaroni. I asked you whether you placed the insurance on the Hamburg cargo late in February; did you or did you not?

A. Personally, I did not place the insurance for the Hamburg cargo; it was placed by a clerk.

Q. Did you place the insurance on the cargo for Rotterdam and Cardiff? A. Yes.

Q. Then when you testified on direct examination that you handled the insurance, you meant that you handled only a part of the insurance?

A. I had general charge of the insurance.

Q. A clerk insured the Hamburg cargo, but under your directions, didn't he?

A. He had general instructions to make a final return of the amount, of the value.

Q. Who gave him those instructions?

A. I did.

Q. Did he have anything to do with placing the insurance on the Rotterdam or Cardiff cargo?

A. He worked out the details.

Q. Then it was he who placed that insurance also, wasn't it? A. Which? [464]

Q. To Rotterdam and Cardiff.

A. I arranged for it all.

Q. Let us not split words over it, Mr. Sciaroni. You apparently are endeavoring to distinguish between the clerk's duties on the Hamburg cargo and your duties on the Rotterdam and Cardiff cargo. Will you explain to me what this clerk who placed

(Testimony of R. Sciaroni.)

the Hamburg insurance did with that, and what he did with the Rotterdam and Cardiff cargo?

A. He made the final report in both cases.

Q. In all three cases?

A. Yes, in all three cases.

Q. Then the clerk to whom you refer had that as his duty, had he? A. Yes.

Q. He did it and you did not; is that true?

A. Yes, he made out the final report under my direction.

Q. Then you directed him to attend to the Hamburg cargo, too, didn't you?

A. Of course, I will have to generalize a little bit in that way. He—

Q. No, pardon me, Mr. Sciaroni, I don't care for any generalities, I want to know what the fact in reference to what you, yourself, did, is. Let us start that way, what did you do about the insurance?

A. I took the matter up with the Fireman's Fund Insurance Company and told them that we had a cargo for Cardiff and for Rotterdam, and requested them to cover us in the premises.

Q. To whom did you talk. A. Mr. Swales.

Q. Mr. Swales, of the Fireman's Fund?

A. Yes.

Q. How much did you place in that conversation? A. In the neighborhood of $600,000.

Q. Do you remember the amounts?

A. Not offhand.

Q. How was that confirmed?

(Testimony of R. Sciaroni.)

A. That was confirmed after the loading was completed by a return made by this clerk.

Q. Did you have anything more to do about it than what you have just told us about telephoning to Mr. Swales of the Fireman's Fund, "Cover us on cargo going out on the 'West Aleta,' part to [465] Rotterdam and part to Cardiff, amounting to $600,000"?

A. I may have had a second conversation with Mr. Swales.

Q. Then your connection with it is limited to a conversation you had over the telephone with Mr. Swales covering what you told him over the telephone about placing certain insurance?

A. That is all.

Q. And that is all you had to do with it?

A. That is all I did.

Q. And the clerk in your office is the one who, in working out the details, gave to the Fireman's Fund the formal notice of the actual amounts?

A. Yes.

Q. And that was undoubtedly in writing?

A. That was in writing, I think.

Q. When, if at all, did you hear about the placing of the Hamburg insurance?

A. After the vessel was reported lost.

Q. Did you have any conversation with Mr. Swales about that? A. No.

Q. So that you didn't know until after the loss of the vessel that the clerk in your office had placed

(Testimony of R. Sciaroni.)

certain insurance on the "West Aleta's" cargo with the Fireman's Fund? A. I did not.

Q. I will put that so that the record will be straight about it. You didn't know anything about that until what you heard afterwards as to the placing of it: Is that correct? A. That is correct.

Q. You made no inquiry when you talked to Mr. Swales about rates, did you?

A. I asked him to give us the best obtainable rate.

Q. You got no definite figure? A. No.

Q. You simply said, "We are sending out a cargo of wine and brandy on the 'West Aleta,' we want you to cover it, the details will be furnished to you later?

A. Yes. Mr. Swales may have indicated the approximate rate.

Q. Is it not a fact, Mr. Sciaroni, that in that conversation you mentioned no amount of money?

A. Oh, I undoubtedly did. [466]

Q. It is not what you undoubtedly did, Mr. Sciaroni, did you?

A. I will say that I did.

Q. How much did you mention?

A. I cannot recollect offhand.

Q. The details of the amount had to be figured out according to the c. i. f. or f. o. b. price?

A. No. We insured this so much a barrel. We knew approximately the number of barrels we had shipped. I gave Mr. Swales the approximate amount when I first took it up with him.

(Testimony of R. Sciaroni.)

Q. What necessity was there, then, for a clerk giving him any report on it?

A. To make the final confirmation of it, the final returns.

Q. In other words, the actual placing of the insurance was effectuated by the formal application?

A. I didn't get that question.

Q. In other words, the effectuation of the insurance was formally worked out in this written application? A. I would say so.

Q. Couldn't I state that the opening conversation of yours with Mr. Swales probably commenced by saying that you, as a friend of Mr. Swales, telephoned to him that you were going to place some insurance on the "West Aleta"?

A. I had never met Mr. Swales.

Q. You mean that was the first conversation you had with him?

A. I probably had a conversation with him before, but I never had met him. That was a definite placement of that insurance.

Q. You feel, then, that this conversation you had with Mr. Swales placed the insurance, although there was not any rate mentioned?

A. I won't say now that there was no rate mentioned.

Q. You said so a few moments ago.

A. I am rather inclined to think that Mr. Swales may have indicated what the rate would be. He may have said it may vary very slightly from this figure.

(Testimony of R. Sciaroni.)

Q. Have you no recollection about that at all?

A. You know, we had a great number of shipments at that time.

Q. Yes. You were thinking more about getting the wine out of the country than anything else, weren't you?

A. We were primarily concerned [467] with that.

Q. You didn't care whether the vessel went to Copenhagen, to Hamburg, or anywhere else, did you?

A. We had made our arrangements to store it at Cardiff, and get it in shape for sale.

Q. You say to store it at Cardiff? A. Yes.

Q. You had not sold it yet, had you?

A. We had made our selling arrangements.

Q. I say, you had not sold it yet, had you?

A. No, it had not been sold.

Q. Do you know whether, in the application made by the clerk to whom you refer a rate was mentioned in that application?

A. Whether in the application from the clerk to the Fireman's Fund a rate was mentioned?

Q. Yes. A. I am quite certain it was not.

Q. What type of report was it that the clerk made?

A. Just the actual amount of money that we were to be insured.

Q. Is that clerk, or was that clerk in a situation where he placed insurance for the California Wine Association as a part of his general duties?

(Testimony of R. Sciaroni.)

A. He was a shipping clerk.

Q. Did that shipping clerk have at his desk a blank which covered the placing of insurance?

A. Will you describe what you mean?

Q. I mean a book or a pad with certain formal words on it, "California Wine Association desires insurance to the amount of so much money placed for a voyage to such and such a place."

A. I suppose it is a form of that kind.

Q. I am not asking you what you suppose, Mr. Sciaroni, I want you to be particular about this. Do you know whether that is the fact, or not?

A. He had a blank, a book with certain forms in it which he filled out as shipments were made.

Q. So that the clerk, then, was the person in the employ of the California Wine Association, who, in the last analysis, gave to the [468] Fireman's Fund, or the National Insurance Co., or the Hartford Insurance Company the details of the insurance for the voyage the vessel was to go upon, and other necessary items which would enable the insurance company to place the insurance; that is true, isn't it?

A. He gave the details, but he had no authority to deviate from my instructions.

Q. What were your instructions to him?

A. To place it with the Fireman's Fund.

Q. Now, isn't this the fact: Your conversation with Mr. Swales of the Fireman's Fund was, We propose to ship some wine on the "West Aleta," we will wish you to insure it, the detailed informa-

(Testimony of R. Sciaroni.)

tion will be furnished you later; wasn't that, in effect, the conversation?

A. No, that was not it. It was an actual placement of a certain amount of insurance, on cargo destined for Cardiff and Rotterdam.

Q. You didn't know how many barrels were going until the ship left, did you?

A. We knew approximately. There might have been a failure upon our part to complete the shipment. That was the only reason for the final written confirmation from the clerk. Mr. Swales placed that insurance. I know from conversations that I have had with Mr. Swales that he would report over the phone that he had arranged for so much insurance on a certain boat.

Q. Your impression is, then, that after that telephone conversation that you had with Mr. Swales, had there been a loss, and nothing more occurred, your clerk who had these formal applications and did not make them out, the California Wine Association would have paid the full amount that you over the telephone told Mr. Swales you wanted?

A. I am quite confident that the Fireman's Fund would have paid that insurance.

Q. And that without a segregation of the number of barrels to go to Cardiff and the number of barrels to go to Rotterdam: Is that [469] your idea?

A. That is my idea.

Q. So it didn't make any difference whether that boat was going to Rotterdam, or to Cardiff, or to Copenhagen, the Fireman's Fund would have paid

(Testimony of R. Sciaroni.)

the insurance just the same; that is the fact, is it?

A. They would have paid it on the placement of a telephone order.

Q. I am asking you in a little more detail now in reference to your last answer, whether the Fireman's Fund would have paid that policy, whether after the wine went to Cardiff and after the wine went to Rotterdam it is your impression that they would have paid the loss?

A. You may not have understood me quite correctly. When I took up the matter with Mr. Swales I indicated the approximate amount for Rotterdam and the approximate amount for Cardiff.

Q. Now, let us get at that approximate matter. How many barrels were going to Rotterdam, according to your knowledge then—not what you know now, Mr. Sciaroni, but according to your knowledge then.

A. I have not looked into the matter since. I know that the greater part of the cargo was for Cardiff. I remember that distinctly, because that is where most of our shipments were going.

Q. I am trying to get your mind back to the day when you had a telephone conversation. Let us segregate what you learned since. I know it is rather difficult to do that, Mr. Sciaroni.

A. Yes, that is pretty hard to do.

Q. Just put yourself in the position you were when you talked to Mr. Swales. Your knowledge then was that you were going to send out so many barrels; how many would you say?

(Testimony of R. Sciaroni.)

A. Offhand I would say about 10,000 barrels.

Q. Of the 10,000 barrels how many were going to Rotterdam? A. Maybe 3,000. [470]

Q. Are you speaking of your recollection, or are you speaking of what you have learned since?

A. I give you my word, I haven't looked up the details of the "West Aleta" shipment since this matter has come up in court.

Q. I am trying to put you in the situation you were then, anxious to get out of the California Wine Association's cellars all of the wine that they could possibly ship out of the United States, because there were a number of different vessels going out then, weren't there? A. Yes, there were.

Q. I am trying to reconstruct what occurred when you telephoned to Mr. Swales. I think it is correct to say, is it not, that you telephoned to Mr. Swales that you were going to send out of San Francisco say 10,000 barrels of wine, and that you wanted him to cover 10,000 barrels of wine, and that a part of it was going to Rotterdam and that a part of it was going to Cardiff; isn't that, in substance, what the conversation was?

A. No, I am quite sure that I indicated the exact number of barrels for Cardiff and the exact number of barrels for Rotterdam.

Q. Why do you say now that you indicated the exact number of barrels when a few moments ago, on two or three occasions you said approximately.

A. Well, it may have varied 100 barrels either

(Testimony of R. Sciaroni.)

way; I don't wish to be pinned down to the actual number of barrels.

Q. You understand, don't you, that this case, though it does not affect the California Wine Association probably now, is one where, as an element of the findings the Court will make, we must take into consideration your conversation with Mr. Swales, and whether or not it made any difference to Mr. Swales, or it made any difference to you—and I don't think it did—that a part of the cargo was to go to Rotterdam and a smaller part to [471] go to Cardiff and a still smaller part to go to Hamburg, we will say; it didn't make any difference, did it?

Mr. MANNON.—We object to the question as immaterial, and particularly in that it contains an incorrect expression of law; it doesn't make any difference what this witness understands as to what the law is or what is involved in this case. Opposing counsel is asking the witness as to what this witness understands to be the importance of this conversation. We should not be bound by that. The question is improper. We submit that this line of questioning should be as to what the conversation was.

Mr. LILLICK.—I will withdraw the question.

Q. Mr. Mannon, in an objection to a question I have just asked you, Mr. Sciaroni, has suggested I am seeking to obtain from you the expresson of an opinion as to the law. I don't want you to misunderstand me, I have no such desire. I ask you,

(Testimony of R. Sciaroni.)

don't you know, Mr. Sciaroni, that in the conversation you had with Mr. Swales he would have covered you by the insurance in the Fireman's Fund Insurance Co. for this shipment of wine, whether it was to Hamburg, or to Rotterdam, or to Cardiff?

Mr. MANNON.— I object to the question on the ground that it is argumentative. We submit that all that counsel is entitled to ask this witness is what was the conversation, and the details of it. Now, he is asking him as to what Mr. Swales may or may not have said.

Mr. LILLICK.—The witness has stated he cannot remember the details of the conversation. I am asking him as to what he actually knows of the situation existant then between the Fireman's Fund Insurance Company and the California Wine Association, with himself as the mouthpiece of the California Wine Association, and Mr. Swales as the mouthpiece of the Fireman's Fund.

Mr. MANNON.—I think if the question is read counsel will [472] see that he is mistaken. Will you read the question, Mr. Reporter?

(Question read by the Reporter.)

The COURT.—I will overrule the objection.

A. I will not say that with particular reference to the "West Aleta" that this incident took place, but I know that in conversations with Mr. Swales in connection with the placing of insurance the matter of the dangers in the North Sea was brought out, and that it might be more difficult to get in-

(Testimony of R. Sciaroni.)

surance for ports in the North Sea. I will say that as far as the "West Aleta" is concerned, no reference to Hamburg was made by me to Mr. Swales.

Mr. LILLICK.—Q. But you did refer to Rotterdam, and you did refer to Cardiff?

A. I certainly did.

Q. And the vessel did go to Hamburg?

A. That I don't know.

Mr. MANNON.—She didn't go to Hamburg, did she?

Mr. LILLICK.—Q. The vessel was intended to go to Hamburg. A. That I don't know.

Q. But the clerk who placed the insurance did place insurance in the Fireman's Fund on the Hamburg cargo?

A. He placed a small amount of insurance for Hamburg.

Q. And at the same rate exactly.

A. I don't know.

Q. You don't know that? A. No.

Mr. LILLICK.—Mr. Mannon, will you furnish us with the details of the insurance on the Hamburg cargo and the details of the insurance on the Rotterdam cargo, and the details of the insurance on the Cardiff cargo?

Mr. MANNON.—Yes. I can state that as far as I know the five barrels of liquor that were consigned to Hamburg were not insured at all. The witness has testified that he thinks someone told him they were insured. So far as I know they were not insured, and so far as I know the Fire-

man's Fund did not pay any insurance on that. [473]

Mr. LILLICK.—The importance of it is this—

Mr. MANNON.—I am simply stating that so far as I know there was no insurance on those five barrels of liquor.

Mr. LILLICK.—The witness tells us that there was. A. I don't know, I assume that.

Mr. LILLICK.—The only importance of it is to prove that the Fireman's Fund insured this shipment to Hamburg, and to Cardiff, and to Rotterdam at this same rate.

Mr. MANNON.—I may state, in answer to counsel's request, that so far as my investigations show there was not any application for any insurance to Hamburg. I have here the application, or, rather, the report that has been testified about, which bears date January 23, 1920, the date, I think, of the policy. This refers only to Cardiff first and then to Rotterdam, and does not refer to Hamburg at all. There may be a Hamburg application. You notice that is not on a form, it is a letter.

Mr. LILLICK.—Let us use this, then, to refresh Mr. Sciaroni's recollection. We offer this as our exhibit next in order. It reads as follows:

RESPONDENT'S EXHIBIT "L."

"CALIFORNIA WINE ASSOCIATION,
"216 Pine Street.
"San Francisco, California.
"January 23, 1920.

"Fireman's Fund Insurance Co.,
California & Sansome Sts.,
San Francisco, Cal.

"Gentlemen:

"(Please refer your reply to AB/BL)
"Attention: Mr. Swales.

"Please be advised that the following is our final and complete specifications for insurance per the Stmr. 'WEST ALETA' which sailed from San Francisco on or about January 6th.

"To Cardiff, Wales 11,000 barrels wine valuation $456,955.00.

"To Rotterdam 1,108 barrels Brandy—1,250 barrels [474] wine valuation $120,493.00.

"To Rotterdam (marked Geneva) 1,742 barrels wine valuation $65,423.00.

"The above is to cover insurance for both Marine and War risk. We understand that the Geneva lot is to be insured as far as Rotterdam only.

"Will you kindly send policies to us at the earliest possible moment?

"Very truly yours,
"CALIFORNIA WINE ASSOCIATION,
"By A. BARRICKS,
"Assistant Sales Manager."

(The letter was marked Respondent's Exhibit "L.")

(Testimony of R. Sciaroni.)

Q. Mr. Sciaroni, I hand you this letter, Respondent's Exhibit "L," and ask you whether with that before you to refresh your recollection you would not now say that this insurance was actually effected by the California Wine Association through this letter, rather than through the telephone conversation that you had?

A. I would say that it was effected through my telephone conversation with Mr. Swales.

Q. You would? A. Absolutely.

Q. Regardless of rates, and regardless of amount?

A. The matter of rates was discussed, no doubt.

Q. You say "no doubt."

A. I am certain of it. Of course, I cannot refresh my mind to name the rate, but I know it was mentioned.

Q. Can you tell us whether at that time Mr. Swales said to you that the rate to Rotterdam will be 35 cents a hundred and the rate to Cardiff 30 cents a hundred—those are purely fictitious figures. A. I cannot recollect.

Q. You would not be able to tell us anything as to what was said in connection with the rate?

A. No.

Q. Would you be able to say whether the same rate applied to [475] Rotterdam as to Cardiff?

A. I would not want to make a definite statement on that.

Q. Don't you know, Mr. Scaroni, that the same rate did apply to Cardiff and to Rotterdam?

(Testimony of R. Sciaroni.)

A. I do not.

Q. Even now, having refreshed your recollection by conversation with your counsel in connection with the case, wouldn't you say that the same rate was charged to Rotterdam as to Cardiff?

A. No, I would not say that.

Q. In other words, you would not say whether it was the same rate, or any other rate?

A. I have not looked into the matter at all. I relied upon my memory to testify.

Q. What is your explanation of the difference between you and your counsel that has become apparent within the last few minutes as to the insurance on the shipment to Hamburg? Mr. Mannon tells us that there was no insurance.

Mr. MANNON.—I say so far as I know.

Mr. LILLICK.—Yes, so far as Mr. Mannon knows.

A. I would not say that there was. I do know that there was a small shipment of a few barrels of wine to be unloaded at Hamburg. I learned that after the ship got into trouble.

Q. And yet I understood you to say you knew that because of this clerk having placed the insurance on it; was I mistaken on that?

A. I didn't want to intimate anything of that kind.

Q. Then I may be mistaken. I am not intending to mislead you at all. Do you not know that the rate at that time for insurance placed by the California Wine Association in the lots that it did place

(Testimony of R. Sciaroni.)

insurance with the Fireman's Fund in was the same for Rotterdam and Hamburg?

A. No, I don't know that.

Q. Don't you know that at that time the rate of insurance for the California Wine Association for wine to Rotterdam and to Cardiff was the same?

A. No, I cannot say that it was. As I said [476] before, I think the element of the North Sea entered into the discussion.

Q. That perhaps was war insurance. I notice that this application speaks of both straight insurance and war insurance.

A. Perhaps.

Q. You have no independent recollection of it at all?

A. Not with reference to the "West Aleta."

Q. How many thousand barrels of wine would you say were shipped by the California Wine Association in the months of September, October, November and December of that year?

A. From California?

Q. From California.

A. About 40,000 barrels.

Q. Was that all shipped out under your insurance covering?

A. I covered all the insurance.

Q. Did you cover that all with the Fireman's Fund? A. All except one lot.

Q. And what was the reason for your covering that particular lot in another company.

Mr. MANNON.—I submit that is immaterial.

(Testimony of R. Sciaroni.)

The COURT.—Yes, I think so.

Mr. LILLICK.—Q. Did you, during this period of the shipment of the 40,000 barrels of wine, pay any extra insurance for a policy in which a deviation clause occurred?

A. I do not recollect any.

Q. In placing the insurance, you personally never went into the details of the policies, did you?

A. What do you mean by that?

Q. I mean, for example, taking this policy: Warranted free from particular average, unless the vessel, craft, be stranded, sunk or burned. You never took up a clause like that and asked them about its meaning, did you?

A. Well, they had all our marine insurance, and they knew exactly how we wanted to be covered. It was [477] a general thing that had been carried down by my predecessors, and we simply went along in that way.

Q. When you telephoned, you say, for the coverage of this wine, was it, in a sense, a report to them under another policy?

A. The open policy only covered amounts up, I think, to $50,000, but this being a larger shipment, had to be taken up independently.

Q. And in taking it up independently, you gave them no information other than what you have told us a few minutes ago—this general conversation; that is true, isn't it?

A. So much for Cardiff and so much for Rotterdam, yes.

(Testimony of R. Sciaroni.)

Q. Do you, by chance, remember the cargo that went on the "Crown of Castile?" A. I do.

Q. How many barrels went out on her?

Mr. MANNON.—I submit that is immaterial, your Honor, that is another cargo.

Mr. LILLICK.—The only connection is the deviation, your Honor, and the rates, as to what particular ports she went. This case is being hung on the question of these ports and the rates charged by insurance companies, to some extent, as to whether or not there was a deviation. So we are interested to know whether Mr. Sciaroni, in placing his insurance on the "Crown of Castile," for example, which went to these different ports, had any difference in his rate on those amounts. Do you object to that, Mr. Mannon?

Mr. MANNON.—I don't see how, in this proceeding, your Honor, you can try all of these cargoes that have been shipped by the California Wine Association.

Mr. LILLICK.—That is not the idea.

Mr. MANNON.—It appears here that the California Wine Association has shipped some 40,000 barrels. It also appears that there are about 10,000 barrels in this particular shipment, [478] so that there were, I suppose, same four or five cargoes, four or five shipments; we are trying a case involving one particular cargo; I don't see how this can have any possible relevancy to this case.

Mr. LILLICK.—I think we are entitled to it, your Honor.

(Testimony of R. Sciaroni.)

The COURT.—I don't understand clearly why you claim that this evidence is admissible.

Mr. LILLICK.—I claim that this evidence is admissible, your Honor, on the theory that the rate charged by the Fireman's Fund for the shipment to Glasgow, we will say, and the shipment to Cardiff, was either more or less.

Mr. MANNON.—What will that prove?

Mr. LILLICK.—That will prove, by the argument that we will make later, that this vessel did not deviate when, instead of putting into Cardiff, she started to go to Hamburg, or Rotterdam, because the insurance company's rate for these different places was the same, the insurance companies wrote insurance at the same rate.

The COURT.—Wrote insurance at the same rate for Cardiff and for Glasgow, do you mean?

Mr. LILLICK.—Yes, another case where, by the usages, which I understand your Honor has permitted in evidence, deviations, so-called, have been permitted.

The COURT.—I will overrule the objection.

A. I cannot recall at this date.

Mr. LILLICK.—Q. And perhaps you are unable to recall at this date the rate? A. I cannot.

Q. You would not be able to tell us whether she went to Glasgow or to Cardiff?

A. Not now; I assume she went to Cardiff. We had no cargo for Glasgow.

Q. You had no cargo for Glasgow?

A. At least that is my recollection. [479]

(Testimony of R. Sciaroni.)

Q. What was the rate, if you remember, on the cargo that was taken on the "Xenia"?

Mr. MANNON.—The same objection.

The COURT.—Objection overruled.

A. I do not recall the rate now. That is the "Belotta"?

Mr. LILLICK.—Yes.

A. I do not recall the rate now.

Q. In the payment of this loss, the Fireman's Fund, from the receipts which we have in evidence, paid the loss as a payment in full settlement and satisfaction of all claims against said company for the loss; in other words—

Mr. MANNON.—We have admitted that for the record, Mr. Lillick.

Mr. LILLICK.—In other words, it was not a loan receipt.

The COURT.—That already has been admitted.

Mr. LILLICK.—Yes, it is admitted, your Honor, but this witness has not testified to the difference between a loan receipt and payment in full.

Mr. MANNON.—I submit, then, that it is not proper cross-examination; I asked the witness absolutely nothing about that on direct examination. If you want to go into that you make the witness your own and I will have an opportunity of cross-examining him.

Mr. LILLICK.—That is all.

Mr. MANNON.—Q. I understand that you were in charge not only of the insurance on this par-

(Testimony of W. T. Bozeman.)

ticular cargo, but of all of the wine that the California Wine Association was shipping by sea, were you not? A. I was.

TESTIMONY OF W. T. BOZEMAN, FOR LIBELANT (IN REBUTTAL).

W. T. BOZEMAN, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. What is your occupation?

A. Traffic Manager. [480]

Q. Traffic Manager for what concern?

A. S. L. Jones & Co.

Q. S. L. Jones & Co. are one of the libelants here?

A. Yes.

Q. How long have you been in their employ?

A. About 13 or 14 years.

Q. What were you doing in connection with your concern in 1919 and 1920? A. Traffic Manager.

Q. What did you have to do, if anything, with the cargo that was on the "West Aleta" on the trip upon which she was lost, with regard to the making of a shipment?

A. I had supervision of the shipment, and made the booking for the space to accommodate the shipment.

Q. You say you made the booking; just what do you mean by that?

A. I engaged the space from the Williams-Dimond freight department, over the telephone.

Q. That was an oral negotiation over the telephone? A. Yes.

(Testimony of W. T. Bozeman.)

Q. Did you say you thought it was over the telephone? A. I know it was.

Q. You know it was over the telephone?

A. Yes.

Q. Do you know Mr. Hooper, who was with the Williams-Dimond Co. for some time? A. Yes.

Q. What conversation, if any, did you have with Mr. Hooper concerning the order of ports of call of the boat "West Aleta" on this trip?

A. No conversation with reference to the order of ports.

Q. What conversation, if any, did you have with Mr. Hooper concerning the vessel going to Hamburg before she went to Rotterdam? A. None.

Q. When did you first learn that the vessel intended to go to Hamburg before going either to Cardiff or Rotterdam?

A. Not until after we had heard of the wreck.

Q. In your experience as a traffic man, will you explain to the Court what the last document is that passes between a common carrier and a shipper of goods by sea? A. The bill of lading. [481]

Q. So far as your experience has taught you, will you state whether on not shipments are always made under a bill of lading?

A. Always, in my experience.

Q. There has been some testimony here concerning the custom of this port or some ports; the bill of lading that is involved in the S. L. Jones & Co. case reads, so far as the deviation clause is concerned: "And to touch at any port or ports, in any

rotation or order, in or out of the customary route, and to call at any port or ports more that once." I will ask you if you know of any custom of this port of any character concerning the interpretation of that clause?

A. No, I know of no custom that would interpret that clause.

Q. Do you know of any custom at any port in the world that would interpret that clause in any particular way, so far as custom is concerned?

A. No, sir.

Q. Do you know of any custom with regard to the interpretation of that clause in connection with advertisements in any way?

A. I never have heard of any such thing, no.

Q. These bills of lading that you speak of are, of course, used in the transit of goods by sea all over the world?

A. So far as I know that has been my experience.

Q. So far as you know, are bills of lading interpreted any differently in San Francisco than they are at any other port?

A. I never heard of any different interpretation.

Q. You don't know of any custom in San Francisco that interprets bills of lading differently from the way they are interpreted, say, in London?

A. No, sir.

Q. Do you know a publication called "The Guide"? A. I do.

Q. That is a newspaper published in San Francisco. I think there have been copies introduced

(Testimony of W. T. Bozeman.)

in evidence here. What reliance, if any, do you place upon "The Guide" in your establishment, in the [482] shipment of your goods, or in the securing of space for the shipment of goods for S. L. Jones & Co.?

A. We place no reliance whatever upon "The Guide" in securing space and making shipments.

Q. Explain to the Court how you usually secure your space from Williams, Dimond & Co.?

A. Or any other company?

Q. I asked you from Williams, Dimond & Co.

A. As a general rule, we phone; there are exceptions to that, perhaps, when we might engage the space in person by calling at the company's office.

Q. Is that confined to your dealings with Williams, Dimond & Co., or do you deal that way with other coucerns?

A. That is our universal practice.

Q. That is to say, you get in touch with the ship's agents in some way? A. That is right.

Cross-examination.

Mr. LILLICK.—Q. You have never handled any business in London, have you, Mr. Bozeman? By handling it in London, I mean your residence is in San Francisco, and your experience is in San Francisco?

A. Yes, my residence and experience has been in San Francisco for the most part. Do you mean have we shipped, or have I had experience in shipping goods to and from London while being in San Francisco?

(Testimony of W. T. Bozeman.)

Q. I know you have had experience in shipping goods to London, Mr. Bozeman, but you have never resided in London, nor have you acted in London in any steamship office there? A. That is right.

Q. What use do you make of "The Guide" in your office?

A. A very limited use, and that for incoming shipments; I refer to import shipments, shipments coming from London, for example, or from the Orient; and then we use it only as a matter of temporary or advance information as to possible arrival dates of the respective steamers that we are inquiring about. [483]

Q. After you had chosen the "West Aleta" as the vessel upon which you would make this shipment, you learned what her ports of call would be, did you not?

A. Not until after we had heard of the wreck.

Q. Didn't you make any inquiry whatever as to where she was going? A. No, sir.

Q. What cargo did you have on the "West Aleta"? A. We had some nutmegs.

Q. For what port? A. Rotterdam.

Q. What else?

A. We had a very small parcel of samples for Berlin.

Q. And the entry port for Berlin is Hamburg, isn't it? A. I believe so, yes.

Q. You knew she was going to Hamburg, did you? A. No.

(Testimony of W. T. Bozeman.)

Q. How did you expect the goods you were shipping to Berlin to enter?

A. Do you mean that Hamburg is the usually accepted port of entry for shipments going to Berlin?

Q. No, I mean how did you expect your goods to reach Berlin? You knew they were going through Hamburg, didn't you? A. No.

Q. How did you expect them to get to Berlin?

A. We were not particularly concerned with how they would get there. We had a parcel receipt covering a certain quantity of goods we shipped to Berlin.

Q. Did the bill of lading read Berlin?

A. The parcel receipt read Berlin.

Q. I am speaking about the bill of lading.

A. I don't believe a bill of lading was issued for that parcel.

The COURT.—Q. You are associated with what concern?

A. S. L. Jones & Co., importers and exporters, on California Street.

Mr. LILLICK.—We offer in evidence this bill of lading, dated January 2, 1920. "S. L. Jones & Co. to Joseph Herrscher, Hotel [484] Bristol, Berlin, Germany; 1 case samples Cd. Fish, copra cake, cocoa beans, milk, jams, beans, prunes, 50 pounds." That is the shipment to which you refer?

A. That is the shipment to which I refer.

Q. And the entry port of Hamburg is on the face of the bill of lading?

Mr. MANNON.—We call the Court's attention at

(Testimony of W. T. Bozeman.)

this time to the fact that while we have no objection to this particular bill of lading, there is no evidence that this bill of lading was delivered to the shipper. I take it that this is an office copy which is produced.

Mr. LILLICK.—I will have it identified in a moment.

Q. I hand you the exhibit which we have just put in evidence, and ask you whether that is not a duplicate original of the bil of lading that was delivered to S. L. Jones & Co.?

A. Yes, that is a duplicate of the bill of lading. Just by way of explanation, Mr. Lillick, I could not find a copy of the bill of lading, and it being a parcel, and it is customary never to take out a bill of lading for a small parcel, I assumed it was a parcel receipt.

Q. Then your testimony to that extent is in error. That is, by refreshing your recollection now, in looking at the bill of lading, you would say now that you did know that the "West Aleta" was to call at Hamburg?

A. May I see that once more, please?

Q. Yes.

A. Yes, I suppose we must have known that, if we had that bill of lading. Obviously, we must have known it.

Mr. LILLICK.—That is all.

Mr. MANNON.—That is all.

(An adjournment was here taken until to-morrow, Wednesday, January 7, 1925, at 10:00 o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [485]

Wednesday, January 7, 1925.

Mr. MANNON.—If your Honor please, regarding the matter we have spoken about heretofore, counsel have now agreed that the vessel, the "West Aleta"' was entered for insurance in the American Steamship Owners Mutual Protection Indemnity Association, Inc., covering this claim. I will read into the record an extract from the by-laws as follows:

"Liability for loss or damage to or in connection with the cargo, or other commodity, except mail or parcels post, to be carried, or which has been carried on board the steamship entered in the association, provided, however, that

"(a) The liability hereby insured against shall not exceed that which would be imposed by law in the absence of contract;

"(b) A deduction of 20 per cent shall be made from any claim arising under this clause where the member has become liable in consequence of deviation, and has omitted to insure the value of the cargo on knowing of such deviation, unless the contract of carriage contains a deviation clause approved by the association."

In the list of ships insured appears the ship "West Aleta," United States Shipping Board Emergency Fleet Corporation.

(Testimony of H. R. Higgins.)

Mr. GRAHAM.—In that respect, your Honor, and in view of the telegram which I read to your Honor yesterday from the Fleet Corporation, Washington, which stated that the "West Aleta" was not insured, I would like to have it understood that what Mr. Mannon has read is excepted to by us on the ground that he has not shown the scope of the coverance of this entry in the Club, whether it is for hull, or for particular risk, or what particular risk it does cover; nor has he shown whether or not that coverage at that time would continue to make the Club now reliable for a recovery [486] which might be had by these three libelants.

Mr. MANNON.—The only point of the offer is to show that the ship was insured against deviation where claims were made by her cargo, showing that she recognized the doctrine of deviation and that she was under liability. That is the only materiality of it.

TESTIMONY OF H. R. HIGGINS, FOR LIBELANT (IN REBUTTAL).

H. R. HIGGINS, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. Mr. Higgins, where are you employed?

A. By Rosenberg Bros. & Co., San Francisco.

Q. What line of work are you in there?

A. I am manager of the Traffic Department.

Q. How long have you been handling that traffic?

A. For seven years.

(Testimony of H. R. Higgins.)

Q. Will you state to the Court briefly what your experience has been in traffic matters?

A. You mean prior to that?

Q. Yes.

A. For nine years prior to that I was Pacific Coast Agent of the Southern Railway Company, at San Francisco, with jurisdiction over the Coast territory. For the previous 8 years I was connected with the same company in various capacities in Kansas City, St. Louis and Denver, representing them in those territories.

Q. So that all of your business career has been spent in traffic matters, I take it?

A. That is correct.

Q. And you have had to do with maritime shipments? A. Yes.

Q. Your firm, Rosenberg Bros., ships continually by water, does it not? A. Yes, very heavily.

Q. This litigation involves a shipment of goods on the "West Aleta," so far as Rosenberg Bros. are concerned, out of San Francisco, which went out in January, 1920, and which was loaded during the end of 1919 and the beginning of January, 1920; did you [487] have anything to do with that shipment?

A. Yes, the shipment that we had on board the "West Aleta," the space was engaged either by me or by one of my assistants under my jurisdiction.

Q. What knowledge, if any, did you have concerning the order of ports of call of the ship "West Aleta" on that voyage?

(Testimony of H. R. Higgins.)

A. I don't recall at this time the details of the transaction as far as her ports of call are concerned.

Q. Have you any recollection on that subject?

A. No, none whatever.

Q. Did you handle this matter personally, do you think, or do you think it was handled by your subordinates?

A. I think the details were handled by my subordinates.

Q. Will you state when you first learned, if you ever learned, that the vessel intended to go to Hamburg before going to Cardiff or Rotterdam?

A. I don't recall. The transaction is so old that it has escaped my memory.

Q. You are familiar with a newspaper known as the San Francisco "Guide," are you?

A. Yes, sir.

Q. And the "Daily Commercial News"?

A. Yes, sir.

Q. Rosenbergs subscribe to both of them?

A. Yes.

Q. I want to call your attention to a clause that appears in the bill of lading used by the Emergency Fleet Corporation vessel that this shipment went on, that is, the "West Aleta"; the bill of lading, we have agreed, is the same as the one set up in the statement of facts, here. This contains a so-called deviation clause or a liberty-to-call clause, reading as follows: "And to touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports

(Testimony of H. R. Higgins.)

more than once." It has appeared here that that ship was advertised in "The Guide" over a certain period of time for the ports of Hamburg, *Hamburg,* Rotterdam and Cardiff; will you state what the custom is, if there [488] is any custom here, or anywhere else, with regard to where the ship may call under such a clause and such an advertisement?

A. I do not know of any custom. They usually go to the ports of call. I think that is generally determined by cargo conditions, so far as my experience has gone.

Q. What reliance, if any, do you place upon advertisements in "The Guide," or in any other newspaper, with regard to your contracts of shipping?

A. We do not place any dependence in the advertisements.

Q. Your engagement for the shipment of goods by you is usually oral, is it, or is it in writing?

A. Generally oral; sometimes confirmed in writing, sometimes not.

Q. So far as you know, how was this "West Aleta" space engaged?

A. I think it was engaged orally.

Q. Do you know whether you engaged it personally, or not?

A. I cannot say at this time, no.

Q. You have other persons who are with you?

A. Yes.

Q. You never have heard of any custom to interpret a bill of lading and an advertisement together, have you, showing where the ship is going?

(Testimony of H. R. Higgins.)

A. No, we would not depend upon the advertisements at all.

Q. Did you ever hear of any other shippers who did that? A. No, I do not know of any.

Q. Rosenbergs are considerable shippers of goods, aren't they? A. Yes, heavy shippers.

Q. And for European ports the Rosenbergs are perhaps the second or third heaviest shipper out of this port? A. I should say so, yes.

Q. And they were in 1919 and 1920? A. Yes.

Q. Referring back to the year 1919, are you able to state whether or not the Williams, Dimond & Co. service under the name of the [489] European-Pacific Line was an old-established service, or a moderately established service, or a new service, or what kind of a service it was?

A. It was a brand new service. I think it started in August, 1919, if I remember correctly.

Q. With regard to service to the United Kingdom and continental ports, was there a shipping service out of this port prior to that time, are you able to state?

A. No, I think there was no service from this port to the United Kingdom or continental ports during the war, or after the war until the European-Pacific Line started up.

Q. And this vessel, the "West Aleta," on her previous European trip, was the first vessel out in that service, wasn't it? A. I think she was, yes.

Cross-examination.

Mr. GRAHAM.—Q. Mr. Higgins, in this particu-

(Testimony of H. R. Higgins.)

lar instance, did you personally engage any space on the "West Aleta" for Rosenberg Bros.?

A. I do not recall whether I handled it personally or whether it was handled by one of my assistants.

Q. You cannot say?

A. No, I cannot say. We made so many shipments on every ship practically that went out of here that there is nothing to distinguish this one in my mind from others.

Q. You were shipping on Williams-Dimond vessels to Europe and to England previous to this trip of the "West Aleta"? A. Yes.

Q. Do you remember the ships that you were shipping on?

A. We were on the "West Aleta" on her first trip, in August; we had very heavy consignments.

Q. Do you know where they were going?

A. I do not recall now.

Q. Do you recall the "Effingham," which preceded the "West Aleta" on the voyage on which she was lost?

A. I remember the "Effingham"; I don't remember the order in which she sailed, as compared [490] to the "West Aleta's" sailing date.

Q. Did you have some cargo on her?

A. Yes, I think we did; I was sure we had some on the "Effingham" at one time or another, whether it was on that trip, or not, I cannot say.

Q. Do you remember the "Bakersfield"?

A. Yes.

Q. You had some cargo on her? A. Yes.

(Testimony of H. R. Higgins.)

Q. I understand you to testify that all of the detials were handled by your subordinates?

A. As a general proposition, yes.

Q. And you did not rely on "The Guide"?

A. No. We were in daily touch with the steamship agents, either by phone, or one of my men would go over there personally.

Q. What do you use "The Guide" for?

A. We use "The Guide" to show the sailing dates, the piers at which the ships will receive, and the date they will receive, and general information of that sort.

Q. You do use it?

A. Oh, yes; we use it now to a greater extent than we did then, because conditions are more settled.

Q. You count it as a pretty reliable shipping paper, don't you?

A. Oh, yes, it is a very good publication for its purpose.

Q. If you saw an advertisement in "The Guide" which read "West Aleta" for Hamburg, Rotterdam and Cardiff, your inclination would be that she was going to those ports in that order?

A. We would confirm that from the agents.

Q. You would ring up the agents and ask them if that is where she was going?

A. Yes, and the order in which she was going.

Q. And if the agent testified that it was their practice to inform large shippers, like yourselves, of the itinerary and routing of these vessels, you

(Testimony of H. R. Higgins.)

would not say that that was an incorrect statement, would you?

Mr. MANNON.—I object to that question. Counsel has no right [491] to ask this witness whether he would say what another witness has testified to was right or wrong.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Do you remember whether anybody from Williams-Dimond told you the route or itinerary of the "West Aleta," or of these various vessels, at the time?

A. No, I don't recall that they did.

Q. You would not say that they did not?

A. I would say that we asked them in specific instances. I do not know that they gave us the information voluntarily in any case; I don't recall that they did or did not.

Q. And, of course, if you asked them they would give you the information, wouldn't they?

A. Yes.

Q. You had some cargo in this vessel for Hamburg; do you remember how much?

A. No, I do not.

Q. You don't remember whether it was considerable, or not?

A. I have not the slightest recollection as to the quantity.

Q. Do you remember the ratio it bore to the Rotterdam cargo? A. No, I do not.

Q. You don't remember that? A. No.

Q. How about the sale of this cargo; most of

(Testimony of H. R. Higgins.)

your cargo, or practically all of your cargo was sold when it was shipped, wasn't it? You were not sending it on consignment to yourself, were you?

A. We made both kind of shipments, direct sales and consignments of our own goods.

Q. Do you remember the fact in regard to the "West Aleta" shipment? A. No, I do not.

Q. What were conditions in Hamburg as to the desirability of getting cargo there at an early date, do you remember?

A. You mean business conditions?

Q. Yes, business conditions.

A. That is a matter that our Export [492] Sales Department would be more familiar with than I. I do not think I could venture an opinion or, rather, that I can recall exactly what the conditions were there.

Q. You remember this was right after the war, and shortly after, and trade conditions had been opened in Germany then, had they not?

A. Yes. The "West Aleta," on her first trip, took a very heavy cargo of foodstuffs from this port, but after that I think according to my recollection, the business slacked off very materially. I doubt very much if we had much cargo on the "West Aleta."

Q. Which voyage do you mean?

A. The first voyage was the one we had the heavy cargo on.

Q. And you don't think you had very much cargo on this second voyage of the "West Aleta"?

(Testimony of H. R. Higgins.)

A. No, I don't think we did, according to my recollection.

Q. You know you had some, don't you?

A. Yes, I know we had some.

Q. I show you, Mr. Higgins, one of the bills of lading covering shipments made by you to Hamburg; that is the contract of carriage, is it?

A. Yes.

Q. What would you say, looking at that contract of carriage, as to the routing of this vessel, could you tell where the vessel was going first, or not?

Mr. MANNON.—I don't think the witness' interpretation of the contract is binding.

Mr. GRAHAM.—Q. What is the customary interpretation of that contract as to where the vessel was going? Could you customarily say where she was going by just looking at that bill of lading, there? A. No.

Q. Would you say she was going to Hamburg first? A. No, not necessarily.

Q. Would you say she was going to Rotterdam first, if it read [493] Rotterdam; if Rotterdam were there in place of Hamburg, would you say the vessel was going to Rotterdam first?

A. No, not necessarily.

Q. If Cardiff were there instead of Hamburg, would you make the same answer? A. Yes.

Q. If I told you that you had approximately 20,000 bags of rice, of beans, of sweepings on the "West Aleta," on this voyage, would you think that was a fairly large shipment, or not?

(Testimony of H. R. Higgins.)

A. No, I would consider that a comparatively small shipment.

Q. About how many tons is that?

A. 20,000 bags?

Q. Yes. A. That would be 100 tons.

Q. So you think you only had about 100 tons on that ship? A. I don't know.

Q. I have just added up the figures. You think it was about 100 tons? A. Yes.

Q. Is this your letter, Mr. Higgins? A. Yes.

Mr. GRAHAM.—If your Honor please, this is a letter from Rosenberg Bros. & Co., which Mr. Higgins has identified as his own. I offer it in evidence as Respondent's Exhibit "N." It reads as follows:

RESPONDENT'S EXHIBIT "N."

(Letter-head Rosenberg Bros. & Co.)

"San Francisco, Cal., Dec. 4, 1919.

"In reply Please refer to File HRH.

"Williams, Dimond & Co.,
310 Sansome St.,
San Francisco, Cal.

"Gentlemen:

"Confirming 'phone conversation with Mr. Clark:

"Please book for our account 500 tons of rice or beans to Hamburg, on S. S. 'West Aleta.'

"We thank you for option on an additional 1000 tons on this ship, good until night of 8th inst. [494]

"Yours truly,
"ROSENBERG BROS. & CO.

"LB."

(Testimony of H. R. Higgins.)

(The document was marked Respondent's Exhibit "N.")

Q. Do you remember whether you exercised that option for the additional 1,000 tons?

A. No, I do not.

Q. You don't remember? A. No, I do not.

Mr. MANNON.—Counsel now produces a carbon copy of a letter; I have not the original. I have no objection to counsel showing this copy to the witness.

Mr. GRAHAM.—Q. I show you another letter, Mr. Higgins: Do you remember receiving that?

A. No.

Q. You don't remember it? A. No, I do not.

Mr. MANNON.—We have no objection, to its going in evidence on counsel's production of it from his files.

Mr. GRAHAM.—We introduce this in evidence and ask that it be marked Respondent's Exhibit "O." It reads as follows:

RESPONDENT'S EXHIBIT "O."

"December 10th, 1919.
500–EO.

"Messrs. Rosenberg Bros. and Co.,
334 California Street,
San Francisco.

"Gentlemen:

"SS. 'WEST ALETA.'

"This will confirm reservation of space for your account covering shipment of 250 tons of Rice

(Testimony of H. R. Higgins.)

and Beans to be forwarded from here to Hamburg on the above-named steamer.

"We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

"Thanking you for this business, and awaiting your further pleasure, we remain.

"Yours faithfully,

"H."

(The letter was marked Respondent's Exhibit "O.") [495]

Q. So you had at least 750 tons; is that a fairly large shipment on one ship?

A. Yes; that is a fair-sized shipment. Of course, there is nothing to show that we actuallly fulfilled that; it might have been cancelled; I don't know. I don't know what the quantity was that we shipped on that boat.

Q. So that these confirmations of bookings do not represent any contract at all?

A. No. The bill of lading represents the contract.

Q. You are not familiar with the sale of these goods, whether they were sold or not?

A. No, I am not.

Q. If I told you that the goods were sold for delivery in Hamburg, would you be concerned in the traffic department with the date of arrival in Hamburg? You would not, would you?

A. No, we would be concerned with the time of shipment, to get it forward within the contract

(Testimony of H. R. Higgins.)

period, which would call for generally the first half of a certain month, of the last half of the month, or at any time during the month or sometimes over a period of two months.

Q. Didn't you ever sell for delivery date?

A. No, we never sell for delivery date, it is always for time of shipment.

Q. Always for shipment within a certain time?

A. Yes.

Q. Is it not a fact that at that time, in 1919 or 1920, there was a great demand for foodstuffs, such as you people were shipping, in Hamburg and Germany, to be shipped through the port of Hamburg; that is the fact, is it not?

A. Yes, I think there was throughout Europe.

Q. More specifically Germany. Germany was in worse condition than any other of these countries after the war: Isn't that the fact? A. Yes.

Q. So you were anxious to get your goods laid down in Germany as soon as possible?

A. That was the concern of the consignee. Our main object was to ship them within the contract period. [496]

Q. And you didn't care, of course, what route the vessel took at all?

A. Yes, we wanted delivery within a reasonable time.

Q. You remember that you had goods on the "Effingham"? A. Yes, we did.

Q. You don't remember what route she took?

A. No, I do not.

(Testimony of H. R. Higgins.)

Q. If I told you that the "Effingham" took the route, Hamburg, London and Liverpool, you would not see anything unusual in that, would you?

Mr. MANNON.—That is objected to as immaterial. It does not make any difference whether it was unusual, or not; it was another ship.

Mr. GRAHAM.—May it please the Court, this witness testified he knew nothing about customs at that time on shipments to Europe going in or out of the geographical order. I want to show that he made other shipments, and that—

The COURT.—What bearing has on the case?

Mr. GRAHAM.—He has testified as to the custom about a certain thing.

The COURT.—He testified the custom was what?

Mr. GRAHAM.—He testified he didn't know what the custom was.

Mr. MANNON.—He testified he did not know there was any custom to his knowledge.

The COURT.—Yes, he testified he didn't know there was any custom as to whether the ports should be touched in their geographical order, or not.

Mr. GRAHAM.—And I am merely recalling this ship to him.

The COURT.—I will sustain the objection.

Mr. GRAHAM.—Q. You said in your direct examination, in answer to a question by Mr. Mannon, that in your opinion the ports of call depended upon the amount of cargo the ship had, that is, the cargo offerings.

(Testimony of H. R. Higgins.)

A. That had a great deal to do with it. [497]

Q. So that if you had a large amount of bulk cargo, you would expect that to go down in the bottom of the ship and be unloaded last, wouldn't you?

A. I would not attempt to say how the ship should be stowed.

Q. You don't know anything about stowage?

A. No.

Q. What do you mean by "cargo conditions," Mr. Higgins?

A. I meant the volume offering, and also the pressure brought to bear by certain shippers that might have a large cargo for a certain port and might want to get it there first. I have known them to take that into consideration in determining the order of the ports of call.

Q. Is it not a fact that in this particular case of the "West Aleta" you went to Mr. Hooper and told him you had a large consignment of goods represented by these letters, and that you wanted delivery in Hamburg speedily, and that he routed her for Hamburg to suit your convenience?

A. I have no recollection of that, at all.

Q. You don't remember that?

A. No, I do not.

Q. Did you handle the insurance in your concern?

A. No; that is handled by a separate department.

Q. You don't know anything about it, at all?

A. Nothing whatever.

(Testimony of H. R. Higgins.)

Redirect Examination.

Mr. MANNON.—Q. You have already stated, I think, that you were not conversant with the stowage of vessels.

A. I am not.

Q. That is out of your line? A. It is.

Q. I understand your testimony with regard to custom to be that there is not any custom, to your knowledge, with regard to the ship following the advertisement under a bill of lading like the one I showed you?

A. No, I never heard of any such custom.

Q. In regard to the demand for space out of this port, do you know whether or not the "West Aleta" was filled when she went out?

A. No, I do not. [498]

Q. So you would not know whether there was a great demand for the "West Aleta's" space, or not? A. No, I would not.

Q. You gave some testimony that there was a great demand in Germany for foodstuffs: That is correct, isn't it?

A. Yes, I think there was a demand there right after the war.

Q. As a matter of fact, your concern sent over a great shipment on the first boat that went out, the "West Aleta"? A. Yes.

Q. And you did not send such large amounts later, because there was trouble in regard to the payments for them: Isn't that correct?

A. That is correct, as I remember it.

Mr. MANNON.—That is all.

TESTIMONY OF THOMAS W. SMITH, FOR LIBELANT (IN REBUTTAL).

THOMAS W. SMITH, called for the libelant in rebuttal, sworn.

Mr. MANNON.—Q. You are a marine surveyor in this port, Mr. Smith, are you not? A. Yes.

Q. Will you state to the Court briefly what your experience has been in shipping matters?

A. My first experience was 32 years sea service, 22 years in command of vessels. For the last six years I have been a marine surveyor on the San Francisco waterfront.

Q. In connection with your sea experience, did you have anything to do with the North Sea?

A. Yes, for the first 20 years I was at least two months yearly in the North Sea.

Q. During the last six years you say you have been a marine surveyor? A. Yes.

Q. Will you explain to the Court what a marine surveyor does about cargo on a ship?

A. Supervises the loading, lays it out for stability, watches out that there is no overloading, and, in a general way, takes care of the ship for her seaworthiness.

Q. For whom does the marine surveyor act?

A. He is between the [499] underwriters and the ship owner. He is a guarantee man between the two parties.

Q. The ship owner is interested in having proper stowage, and the underwriters are interested in

(Testimony of Thomas W. Smith.)

having proper stowage, and the marine surveyor looks out for that. A. Yes.

Q. We are discussing here the ship "West Aleta"; did you know the "West Aleta"?

A. I knew of her type.

Q. State what you know about that ship? It appears in evidence here that she was an 8,800 Shipping Board Boat.

A. They are all practically the same in construction; there may be a little difference in the finish of them, but the construction work is practically the same in all of them.

Q. Have you ever had anything to do with the construction of these 8,800 ton boats.

A. I was representing one of the operators for a year as port captain, and I was handling her sister ship, the "West Camac."

Q. The "West Camac" and the "West Aleta" were built over here at Schaw-Batcher's, weren't they? A. Yes.

Q. Did you have an opportunity to examine the manifests of the "West Aleta"? I show you Respondent's Exhibit "C," which has been introduced in evidence here; have you examined that?

A. Yes, I have examined it.

Q. So that you know what cargo there was on the ship for Cardiff and what cargo there was on the ship for Rotterdam, and what cargo there was on the ship for Hamburg, according to this manifest? A. Yes.

Q. Now, I will ask you, Captain, if it is practi-

(Testimony of Thomas W. Smith.)

cable to stow that ship so that the ship could have gone first to Cardiff, and there the Cardiff cargo have been unloaded, then the ship to have gone to Rotterdam and there unloaded the Rotterdam cargo, and then [500] from Rotterdam gone on to Hamburg and there unloaded the Hamburg cargo? A. Yes, quite practical.

Q. Would the ship have been seaworthy at all times during the voyage, if she did that?

A. Yes.

Q. The manifest shows, I think, that the "West Aleta" carried for Cardiff 11,480 barrels of wine and 226,134 board feet of lumber for Cardiff; are you taking that into consideration in answering the question? A. Yes.

Q. And you could have loaded the boat so that that cargo could have been taken off at Cardiff first: Is that right? A. Yes.

Q. For Rotterdam the manifest shows the vessel had 1,149 barrels of bean oil that weighed 440 pounds each; 2,146 cases of bean oil aggregating 182,748 pounds; and 4,000 barrels of wine, weighing 500 pounds each; 4,180 bags of rice weighing 418 pounds; 76,853 board feet of lumber, and a balance of 25 tons of general merchandise; would it have been practical to have loaded the vessel so that after the Cardiff cargo had been taken off at Cardiff this Rotterdam cargo which I have just enumerated could have been unloaded at Rotterdam? A. Yes.

Q. Now, with regard to Hamburg, the cargo that

(Testimony of Thomas W. Smith.)

she carried, as shown on the manifest, was 155 barrels of wine, weighing 500 pounds each; 302 tierces of inedible tallow weighing 451 pounds each; 438 barrels of dried salt beef weighing 238 pounds; 16,586 bags of rice and beans aggregating 1,684,604 pounds; 2,288 cases of canned herring aggregating 163,276 pounds, and a balance of 40 tons of general merchandise; would it have been possible to have had that cargo so stowed when the ship left San Francisco that after you had taken off the Cardiff cargo, as you have testified, and after you had taken off the Rotterdam cargo, as you have testified, you could have taken the rest of it off at Hamburg? A. Yes. [501]

Q. And the ship would have been seaworthy during the entire transit, would she? A. Yes.

Mr. MANNON.—If your Honor please, there has been some little differentiation, I find, between the manifest and the agreed statement of facts, so I will ask the witness about the figures in the agreed statement of facts, also.

Q. We have an agreed statement of facts in this case, Captain Smith. Assuming that the steamship "West Aleta" loaded, and carrying approximately 2,634 tons of cargo destined for Cardiff, Wales, 1,503 tons of cargo destined for Rotterdam, Holland, and 660 tons of general merchandise destined for Hamburg, Germany; and assuming also that the cardiff, Rotterdam and Hamburg cargoes were chiefly barrels of wine, brandy and oil: With that cargo, could the ship

(Testimony of Thomas W. Smith.)

"West Aleta" have been so stowed when she left San Francisco that the Cardiff cargo could have been taken off at Cardiff first, the Rotterdam cargo taken off at Rotterdam second, and the Hamburg cargo taken off at Hamburg, Germany, third, the ship at all times being seaworthy during the voyage? A. Yes.

Q. I ask you to make up a stowage plan showing how that could be done; is that the plan you have there?

A. Yes. There are two or three ways, but I think this is one of the most efficient plans.

Q. Before we look at the plan, let me ask you this question: Do you find that the ship "West Aleta' was filled with freight, with the cargo I have specified, alone?

A. No, she had quite a little bit of space left besides deadweight tonnage.

Q. That is to say, all of the space on the "West Aleta" was not taken, as shown by that manifest?

A. No, it was not.

Q. In moving that cargo out of Cardiff and then moving out the Rotterdam cargo at Rotterdam, would it be necessary, if the vessel [502] were properly stowed, to move any of the other cargo to get off the Cardiff cargo first?

A. The way I have laid out that stowage nothing would have to be disturbed.

Q. And in unloading her as to the Rotterdam cargo, would it be necessary to move any of the other cargo at Rotterdam?

(Testimony of Thomas W. Smith.)

A. No, sir, not according to the plan.

Q. And of course at Hamburg all that would be necessary would be to clean out the Hamburg cargo? A. Yes.

Q. As a marine surveyor, if you had loaded her the way you have outlined in this plan, would you have given her a marine certificate? A. Yes.

Q. In your opinion as a marine surveyor, that would have been a proper thing to have done?

A. That would be a proper thing.

Q. This document that you hand me is the plan of loading to which you refer?

A. Yes, a plan drawn up from the manifest.

Mr. MANNON.—I offer this in evidence in connection with the testimony of this witness, and ask that it be marked Libelant's Exhibit 21.

(The document was here marked Libelant's Exhibit 1.)

Q. Referring to this Libelant's Exhibit 21, will you please illustrate to the Court on that plan where you put your Cardiff cargo?

A. The Cardiff cargo is indicated by the yellow space. By taking that out it leaves her in good trim to reach Rotterdam. The red is the Rotterdam cargo, the second port. By taking the Rotterdam cargo out it leaves the green, which is the Hamburgh cargo, distributed by filling up the high forepeak tank and using the No. 1 double bottom for fuel oil.

Q. On this plat that you have produced, Libelant's Exhibit 21, will you explain to the Court

(Testimony of Thomas W. Smith.)

what divisions there are in the hold, in front of the deep tank, etc.

A. There are two compartments, No. 1 and No. 2 lower hold. [503]

Q. The forward compartment is No. 1?

A. Yes.

Q. And the compartment right behind that is No. 2? A. Yes.

Q. Now, in the after part of the ship, explain what the compartments are there?

A. Those are what we call No. 4 and No. 5. This is what we consider the deep tank; sometimes it is called No. 3 hold. This is No. 4 hold, and this is No. 5 hold. There are two compartments here, both upper and lower.

Q. Starting in at the bottom part of the ship, Captain Smith, you have the hold divided into four compartments, haven't you? A. Yes.

Q. And between the fore and aft compartments the deep tank and the engine-room?

A. The deep tank and the engine-room, yes.

Q. In the forepart of the vessel, and immediately over the two compartments, what is this space?

A. That is what we call the 'tween-deck space. That is in two compartments also.

Q. And what is over the two aft compartments?

A. Also the 'tween-deck space.

Q. Where is the so-called shelter-deck space?

A. There is no shelter-deck on this, there is what we call the bridge-deck.

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(Testimony of Thomas W. Smith.)

Q. As you have stowed the cargo, or indicated that the cargo might have been stowed so as to unload in the manner you mention, will you indicate to the Court what space there would be still on the vessel for other cargo?

A. The whole of the bridge-deck space, of a cubic capacity of 37,166. Then the cubic space in No. 1—I have not figured that out, but there is sufficient to give her space there to stow anything if there was any question that there was too much stowed up here.

Q. Will you indicate how you would have the Cardiff cargo taken out without disturbing the other cargo, according to your plan?

A. The yellow is the Cardiff cargo. You are working here your four hatches. This is the short hatch. They would double up on [504] this hatch. The wine would come out of No. 2 and No. 4 and No. 5.

Q. And that would all be accessible, would it, without moving any other cargo?

A. Without moving anything. This small green space here is in the forepart of the hatch. The lumber is in the wings, on the sides.

Q. The Rotterdam cargo is shown in red, is it?

A. Yes.

Q. Just indicate to the Court how that would come out.

A. After the Cardiff cargo comes out, this lumber would come out of No. 1; that is stowed in the wings, here; it is extended along here.

(Testimony of Thomas W. Smith.)

Q. How about the rice?

A. That would come up through the bridge-deck.

Q. Without moving anything?

A. Without moving anything.

Q. How about lower hold No. 4?

A. No. 4 lower hold could be discharged also, because the Cardiff cargo is out. And the same thing is true of No. 5, the Cardiff cargo being discharged.

Q. We have had some discussion here about wet and dry cargo; will you indicate to the Court whether the wet cargo is above or below the dry cargo?

A. All the wet cargo is stowed by itself right here. There is nothing here that can be damaged by wet goods. This takes up the whole space. This is the wine, that is the wine, that is the wine; this is lumber, in the wings of the 'tween-decks. The general cargo is in the forepart of the 'tween-decks. In the No. 3 'tween-decks is beans and rice. No. 4 lower hold, starting at the bottom, is Rotterdam bean oil; on top of that is Rotterdam case bean oil, the lower part being barrel oil; on top of that is stowed barrels of wine. In No. 5 hold we have tallow in the forepart of it, with dried salt beef stowed on top; cases of herrings stowed in the after part; stowed on top of that is the Hamburg beans and rice. That is a dry compartment. In No. 5 'tween-decks is stowed lumber in both wings.

Mr. MANNON.—That is all. [505]

(Testimony of Thomas W. Smith.)

Cross-examination.

Mr. GRAHAM.—Q. Are all of these 8,800-ton vessels exactly the same as to their carrying capacity and the dimensions of their holds?

A. More or less. There is a great similarity. There is not enough distinction to be noticeable, hardly.

Q. Have you ever had any experience in loading and carrying wine? A. Yes.

Q. What vessel?

A. I cannot name the vessel, but just previous to prohibition going in I loaded a full cargo of wine on one of the wooden Shipping Board boats for Hamburg.

Mr. MANNON.—Was it the "Bakersfield"?

Mr. GRAHAM.—No, the "Bakersfield" was not a wooden ship.

Q. The "Bakersfield" was not a wooden ship, was she, Captain?

A. No, the "Bakersfield" was not a wooden ship.

Q. Was it the "Xenia"?

A. I can't recall the name, but I know that I loaded the wine.

Q. This stowage plan that you have drawn up is drawn up on the consideration that you have so many tons of cargo of certain commodities to be delivered at certain points, isn't it? A. Yes.

Q. It has no bearing on when the cargo arrives at the ship for loading, at all, has it?

A. I don't understand you.

Q. I ask you if this cargo plan is drawn up

(Testimony of Thomas W. Smith.)

solely on the basis of having so many tons, and knowing the various commodities for the three ports in question? That is your sole basis for the stowage plan, isn't it?

A. The sole basis was, I started in at Seattle and first took that cargo on board, so that the vessel would be seaworthy coming down the coast. You know part of that was loaded at Seattle. All that cargo is taken care of so that she would be seaworthy coming down the Coast. Then she arrived here to take on the rest of her cargo, wine, beans, and rice.

Q. The only thing you have considered is the amount of cargo, and [506] the commodities?

A. The amount of cargo and the commodities?

Q. Yes: Is that right? A. Yes.

Q. What did you load in Seattle?

A. I loaded the tallow, the dried beef, and the lumber.

Q. And where was all that stowed?

A. That was stowed as shown in the plan.

Q. Was there anything on the floor of the 'tween decks covering over the hatchways when she left San Francisco? A. You mean with my plan?

Q. Yes.

A. In No. 5, no; in No. 4, wine. In No. 3 it is loaded over the deep tanks with beans and rice. In No. 2 with wine. No. 1 with lumber in the wings, and general cargo, with the hatches clear.

Q. Mr. Mannon has told you that this vessel would have approximately 660 tons of cargo after

(Testimony of Thomas W. Smith.)

she left Rotterdam to go to Hamburg; have you had any experience on that trip from Rotterdam up to Hamburg?

A. I have had experience around Terschelling Island several times.

Q. But on that direct trip from Rotterdam to Hamburg?

A. Not a direct voyage from Rotterdam to Hamburg. It is the same voyage, though, as coming from Scheld.

Q. That is a pretty rough voyage, isn't it, Captain?

A. No, not for a high-powered steamer. The North Sea is rough, but it is a short, choppy sea. Your big danger in the North Sea is the coast line, and not the heavy weather.

Q. How about the wind in the month of February? A. It blows hard.

Q. It blows hard? A. Very hard.

Q. So a ship would be pretty unmanageable if she were light, wouldn't she?

A. No. A ballast ship goes across there all the time. As I say, the wind is high, but there is no sea for a high-powered steamer to contend with. [507]

Q. I notice you have your cargo for Hamburg all loaded aft in No. 5. It is approximately 600 tons. What would be the effect of loading in No. 5 aft on the steerage way of a vessel?

A. It submerges her wheel more. By filling your No. 1 peak tank, which is 111 tons, and your

(Testimony of Thomas W. Smith.)

fuel oil tank, which is around 200 tons, that balances her up. What we want to get with a steamer is to get her screw submerged, so as to make her seaworthy.

Q. So that 111 tons forward would balance 600 tons aft?

A. No, it gives her 3 feet by the stern, which is what we want with a ballast ship.

Q. How high out of the water is the ship going to be going from Rotterdam to Hamburg?

A. That I could not say offhand.

Q. You don't know what she would draw?

A. I don't know, but probably about 14 feet aft and about 8 feet forward, 8 or 9 feet forward.

Q. She would be away out of the water, wouldn't she?

A. They all are; she is no exception to other ships.

Q. She would be away out of the water in this particular case with 600 tons aft, wouldn't she?

A. Naturally. I had the "West Camac" come back from London with nothing in her, and she came all the way across the ocean.

Mr. GRAHAM.—I move to strike that last part out, your Honor, about the "West Camac."

The COURT.—Motion denied.

Mr. GRAHAM.—Q. When you load a vessel, Captain, do you have all the cargo before you at the same time? A. No, you don't.

Q. So you would have to take into consideration, in drawing a stowage plan, the question of

(Testimony of Thomas W. Smith.)

when the cargo is going to arrive, wouldn't you?

A. Yes, we lay it out accordingly.

Q. That would have quite some effect on the stowage plan, wouldn't [508] it?

A. I don't see that it has much effect on it; it is all wine and beans. I am speaking of where there are 101 commodities coming to a ship.

Q. Is it not a fact that very often the engagement list showing cargo offerings on a ship is altered when offerings are cancelled?

A. At times.

Q. If you don't know until just about time the ship is ready to sail, about those matters, how should she be stowed?

A. We lay our plans and very seldom alter them; we may alter the position of certain cargo if we take certain other cargo. You notice we have the bridge-deck clear there to put anything you would want to.

Q. Would you put wine up on the bridge-deck?

A. Yes.

Q. How about beans?

A. No, not beans. Lumber can go on the bridge-deck. I can alter that plan two or three ways and make the delivery the same. I have only drawn that one up as one of the efficient plans.

Q. So if you had an offering of beans the last minute, that would alter your stowage plans, wouldn't it?

A. Not necessarily, with a vacant space in the No. 1 'tween-decks, and the No. 5.

(Testimony of Thomas W. Smith.)

Q. The question of the time of arrival of goods at the dock has nothing to do with making up the stowage plans?

A. Not when the ship is not fully loaded. Her cubic capacity is not taken up.

Q. How about her deadweight?

A. She was well free of her deadweight mark.

Q. That is, she could have taken more deadweight?

A. Yes, according to the tonnage shown on the manifest.

Q. It is possible, is it not, Captain, that there might have been cancellations of cargo offerings for the "West Aleta" which would have altered your stowage plan?

A. If there were cancellations it would make it all the less, wouldn't it? [509]

Q. That would alter your stowage plan, wouldn't it? A. Not necessarily.

Q. If you had drawn up your plan as indicated here, and some man came along and cancelled 1,000 barrels of wine, it would change it, wouldn't it?

A. It would change the buoyancy, it would change the amount in the ship, but it would not alter the stowage in that ship.

Q. Suppose the man came along and cancelled 1,000 barrels of bean oil, wouldn't that alter the stowage?

A. It would alter the stowage; I would have to put the bean oil in the shelter-deck.

(Testimony of Thomas W. Smith.)

Q. I am asking you if a man cancelled 1,000 barrels of bean oil, if that would alter the stowage?

A. It might alter the stowage, but all the weight is not in one compartment.

Q. I am asking you if it would not alter it.

A. It would alter the stowage plan, yes.

Q. So is it not a fact that you cannot tell exactly what your ship is going to stow until the cargo gets down there; that you only can tell approximately, in making up a plan like this?

A. This plan was drawn up after the ship was loaded. We lay out the cargo first, whatever is offered, so that we can take care of that cargo if anything is withdrawn at the last minute.

Q. This plan is drawn, as you said, after the cargo is loaded, and with the knowledge that you had that it was to have on board certain commodities of certain weights for certain ports?

A. Yes.

Redirect Examination.

Mr. MANNON.—Q. Captain, will you explain to the Court whether ordinarily, when you have a vessel to stow, you lay out a plan before you start putting in your goods, or not?

A. Yes, we always lay out a plan so that we know where our dry goods and our wet goods are going.

Q. So for a vessel here empty now, and you had a cargo coming to [510] the dock later, you would have to have a plan first, wouldn't you?

A. We have a rough plan; we have to have a plan drawn up finally before delivery. There are so

(Testimony of Thomas W. Smith.)

many different commodities coming down in a general cargo that we have to keep the wets clear from the dry. We have to keep the perishable goods from the damp goods. You cannot stow rice with lumber; the sweat created from the lumber would cause damage to the rice. All those things have to be taken into consideration. Therefore, we draw up a rough plan for the cargo before we start loading. Only as a finished thing do we draw up the final plan for delivery at the other end, to show the consignees where the goods are, and how they can work the ship, how many gangs can be worked at different ports.

Q. That is another way of saying that you have to plan out your work? A. Yes.

Q. Libelant's Exhibit 21 is on this blank form, and it has your name at the top?

A. Yes, that is a form I use with my ships.

Q. So you always have to lay out a plan for the ships? A. Yes.

Q. And it was nothing unusual to lay one out for the "West Aleta"? A. No.

TESTIMONY OF J. W. JORY, FOR LIBELANT (IN REBUTTAL).

J. W. JORY, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. What is your business or occupation?

A. Marine surveyor for the Board of Marine Underwriters.

(Testimony of J. W. Jory.)

Q. Whereabouts are you in business?

A. 351 California Street, San Francisco.

Q. How long have you been in that occupation?

A. Three years.

Q. What did you do before that time?

A. I went to sea.

Q. How long did you go to sea?

A. About 25 years.

Q. What did you do when you went to sea?

A. I started from boy [511] and worked myself up to master.

Q. So you have really spent your entire time in connection with shipping? A. Yes.

Q. And your present business has to do with shipping? A. Yes, it has.

Q. How frequently do you have occasion to survey vessels? A. Three or four times a day.

Q. Did you survey any to-day? A. Yes.

Q. Your regular business, then, is a marine surveyor? A. Yes.

Q. What do you make certificates for, if you make them?

A. To pass on the stowage, and to approve the vessel as seaworthy and fit to carry the cargo, and properly loaded, and enough fuel aboard to proceed.

Q. You are in the same line of business Captain Smith is, who has just testified here?

A. Except that I am not on a fee, I am on a salary.

(Testimony of J. W. Jory.)

Q. But the character of business you do is the same? A. Exactly the same.

Q. We are dealing here with the ship "West Aleta." The manifest is in evidence. It appears from the manifest that the "West Aleta" carried 11,480 barrels of wine, 226,134 board feet of lumber for Cardiff; then she carried for Rotterdam 1,149 barrels of bean oil; weighing 440 pounds each, 2,146 cases of bean oil aggregating 182,748 tons, 4,000 barrels of bean oil, weighing 440 pounds each, 2,146 bags of rice weighing 418 pounds; 76,853 board feet of lumber, and the balance of 25 tons of general merchandise. And she carried for Hamburg 155 barrels of wine weighing 500 pounds each and 302 tierces of inedible tallow weighing 451 pounds each, 438 barrels of dried salt beef weighing 230 pounds each, 16,586 bags of rice and beans aggregating 1,684,604 pounds, 2,288 cases [512] of canned herrings aggregating 163,276 pounds, and a balance of 40 tons of general merchandise. You have had those figures before you heretofore, haven't you?

A. Yes.

Q. Do you know a steamer of the type of the "West Aleta"?

A. Yes, the 8,800-ton type Shipping Board steamer?

Q. Yes. Will you state whether the cargo which I have just listed for you could be put on the ship "West Aleta" so that the Cardiff cargo could be taken off first, as I have specified it to you, and the Rotterdam cargo could be taken out next, and then

(Testimony of J. W. Jory.)

the Hamburg cargo could be taken off last, the ship at all times being seaworthy, and in taking off the cargo it not having to be necessary to move other cargo to any extent?

A. Yes, she can be loaded that way.

Q. If that were done, would the ship be seaworthy? A. Yes.

Q. You would be able to give her a certificate?

A. Why, certainly.

Q. Because of some little variation as between the manifest and the agreed statement of facts, I want to ask you about the figures appearing in the agreed statement of facts also. The figures are a little different, but about the same. Will you assume that the steamship "West Aleta" loaded out of San Francisco with approximately 2,634 tons of cargo destined for Cardiff, Wales, 1,503 tons of cargo destined for Rotterdam, Holland, and 661 tons of general merchandise destined for Hamburg, Germany; and assume also that the Cardiff and the Rotterdam cargo were chiefly barrels of wine, brandy and oil; will you state to the Court whether that cargo could have been so loaded that the Cardiff cargo could have been taken out first and the Rotterdam cargo could have been taken out second, and the Hamburg cargo could have been taken out third, the ship remaining seaworthy at all times?

A. Yes, she could be loaded to take that out.

Q. I asked you to make up a plan; have you got one? A. I have a [513] rough sketch, what we call a working plan.

(Testimony of J. W. Jory.)

Q. Will you please state to the Court how you lay out the cargo of a ship for loading, Captain?

A. On a type like this, where we know all the commodities, we have the cubic of each hatch—

Q. The cubic capacity of each hatch, you mean?

A. Yes; and we have a stowage factor for this kind of cargo; for instance, barrels of a certain capacity, and grain and lumber, etc.; we figure to stow that in the hold, to stow so much in that many feet.

Q. That is to say, you know the cubic capacity of the hold? A. Yes.

Q. And you know the cubic capacity of the cargo?

A. Yes. Then we figure the weight of this cargo to keep her in trim after the first cargo is discharged, or the second cargo is discharged, etc. Then we figure for stability, that she must not have too much above decks, or not enough below decks; she must be so stowed so that if there is cargo in the 'tween-decks, then we have to use the tanks, ballast in the fuel tanks or the deep tank. It is not quite so hard to stow a vessel of that type as it is a sailing vessel.

Q. With this cargo which I have enumerated to you, would the "West Aleta" be filled up, or would she have space? A. She would have space.

Q. This document which you produce here is a plan made up to put the cargo that has been recited to you on the ship "West Aleta"? A. Yes.

Mr. MANNON.—We offer this in evidence in

(Testimony of J. W. Jory.)

connection with the testimony of this witness, and ask that it be marked Libelant's Exhibit 22.

(The document was marked Libelant's Exhibit 22.)

Q. Will you explain this plan that you made up, Libelant's Exhibit 22, to show how the Cardiff cargo would be taken out, and where you would put that cargo?

A. The red ink represents Cardiff, [514] the green ink represents Hamburg, the blue ink represents Rotterdam. As she loaded up in the Sound first with the lumber cargo, I put 100,000 feet in the bottom of lower hold No. 1 and 100,000 feet in the bottom of lower hold No. 4. That is taking care of 200,000 feet. The surplus I would put up in the bridge-deck space, 26,134 feet in her bridge-deck space. That is the Cardiff lumber. She also had to load in the Sound 76,853 feet of lumber for Rotterdam. I put that in lower hold No. 2, in the bottom. That gives her enough stability to come down the coast. Most likely she was going to take her oil on down here in San Francisco. You wouldn't have to fill her for ballast coming down. If she had this deep tank filled she would come down all right anyhow, with that much lumber. Then in San Francisco I would go to No. 1 hatch and fill up the remainder of my cubic, which would be 3,242 barrels of Cardiff wine on top of the Cardiff lumber. That would finish the lower hold complete. For Hamburg, in the No. 1 'tween-decks, leaving the square of the hatch clear so I could work out

(Testimony of J. W. Jory.)

the Cardiff lumber and the Cardiff wine, I would run the Hamburg wine and the Hamburg barrels of beef and tallow down to the end, about two high, around the after part of the wings, and my cases of herrings in the forward part, right across the ship, thus leaving the square of the hatch clear. Then going to No. 2 hatch, I would load the Rotterdam bean oil and the Rotterdam wine on top of the Rotterdam lumber, making this lower No. 2 complete, finishing up the 'tween-decks full with 2,678 barrels of wine for Cardiff, going all over the hatch, because any leakage over the top of the hatch would not affect anything down here, because it is all barrel cargo anyway. Then going up in the shelter-deck, on top of the lumber I would put 678 barrels of wine in this compartment to take care of any excess that I might find for the other hatches. [515] This was just a rough drawing plan I made up. What was left over I could put up on top of this hatch, so that I would not have to overstow any other cargo. Going into No. 3 lower hold, I would put my 16,586 sacks of rice in the lower hold; that would take up about half of the hatch. Of course I would have a separation there which I would use for grain, or for rice, so in case there were any torn bags when you discharge at Rotterdam it would not go on top of the Hamburg cargo. Then I would place my 4,180 sacks and my 25 tons of general merchandise stowed in the wings on top of that and finish that up. That gives the cubic capacity of that hatch very nearly full.

(Testimony of J. W. Jory.)

That would leave me about 1,000 cubic feet of space in this hatch. Then into No. 3 'tween-decks I would work the barrel wine all around the wings, leaving the hatch clear, here, not because I had to discharge this hatch first, but because I would not stow barrel wine on top of the hatch where I had sack stuff below; in case of leakage through a hatch, it would damage my cargo below, but if it leaks in the 'tween-decks there are scuppers there to take care of it. These scuppers are all inspected. That is one of our duties, to inspect those scuppers; we have to see that the scuppers in the 'tween-decks are clear and free. Then in No. 4 lower hold, on top of the 100,000 feet of lumber loaded in the north, I would finish that hatch up with wine, which would give me 2,286 barrels of wine for Cardiff; then going in the 'tween-deck, in the after section of the 'tween-deck, I would take care of my Rotterdam cases of bean oil, 2,146, against the after bulkhead abaft the hatch. This bean oil we generally have some trouble with; in most cases we have had considerable leakage with the bean oil in cans. The best place for that is in the after part of the ship, where the scuppers are. There is no danger below, because we have no dry perishable cargo at all near it. The remainder of that hatch I would fill up with 1,200 [516] barrels of wine, which would cover up the whole square of the hatch. It could not bother anything going down below, because there are barrels right below, any leakage there would not do any damage.

(Testimony of J. W. Jory.)

The COURT.—Q. That is the 'tween-decks?

A. Yes.

Q. 1,200 barrels of wine for Cardiff? A. Yes.

Mr. MANNON.—Q. You have spoken of these various holds as 1, 2, and the other figures you have named; will you just write there the figures you have been speaking about?

A. Yes. On the stowage plan the Shipping Board puts out, that is designated as the bridge-deck hatch. We speak of 1, 2, 3 and 4 holds. Some of the ships are different.

Q. In your testimony you have been referring to these holds as 1, 2, 3 and 4, haven't you?

A. Yes, as the cubic capacity is outlined according to the Shipping Board scale. We have one little space here, 14,000 cubic feet, called the upper 'tween-deck space; that is alongside the boilers in these ships. You could put some general cargo there. You would not want to put canned goods, or anything that is subject to heat there. I know the 'tween-decks of those vessels.

Q. After you got the vessel loaded, in connection with the way you have testified, indicate to the Court where the space would be left?

A. We would have this compartment, the upper 'tween-deck in the bridge-deck space—that would be 14,635 cubic feet. I didn't use that at all. That is a deep tank; that has no bearing on the case. That ship carries fuel oil in that tank. In some ships they carry cargo there. I would have allowed more space in No. 3 'tween-decks for dry cargo. I

(Testimony of J. W. Jory.)

would allow 5,000 cubic feet for that. That is fair. There is generally about 4,000. This is giving her lots of room for stowage, 15 cubic feet to the barrel for stowage I have given it. [517]

Q. Could you stow that ship in any other way than as indicated on that plan and take out your Cardiff cargo first, your Rotterdam cargo second, and your Hamburg cargo third, and have your ship seaworthy?

A. Yes, we could juggle it around. By moving this into No. 4 and using the forward end; instead of putting that in the last hatch, and putting that in No. 3—I did that so she would not have too much draft on her last part.

Q. Would you have to abide by the particular plan you have laid out in order to accomplish the result, or could you do that in some other way?

A. Yes, I could do it in two or three different ways.

Q. In your business you have to figure out the weights and the cubic capacity, and then you have to put your cargo inside the ship, so that the ship will ride safely? A. Yes.

Q. And you could use some other plan, could you?

A. Yes, I could use three or four different plans.

Cross-examination.

Mr. GRAHAM.—Q. That plan you have drawn up only takes into consideration the fact that you know so much cargo is going on the ship, what the commodities are, and the ports she is going to?

A. Yes.

(Testimony of J. W. Jory.)

Q. If I told you that that ship was loading for three ports, and it was loading over a period of, say, two or three weeks, that might enter into your consideration as to the stowage, might it not?

A. Yes.

Q. So that you would have to know all of the conditions of loading in order to draw up a stowage plan, a competent stowage plan for your ship, wouldn't you? A. Well, no.

Q. You would not? A. No.

Q. You could draw up a competent stowage plan, could you, by just knowing how much cargo she had, what the commodities were, and [518] what ports she was going to?

A. By knowing what port she was going to I could draw up a stowage plan, but I could load her at any time.

Q. You could? A. Yes.

Q. Regardless of when the goods arrived?

A. Regardless of when the goods arrived, except that some demurrage might be put on the cars, and, of course, you would not want that.

Q. You would have to take into consideration the demurrage on the cars, wouldn't you, and tying up the cargo?

A. If we were holding up the cargo we would make some consideration for that, too. With a 'tween-decks ship like that, and the cubic capacity that vessel has, sometimes we will have a car come in and rather than put it in we will knock off the stevedores and round up the cargo in the 'tween-

(Testimony of J. W. Jory.)

decks, and put that down below. You know, it costs something to put on hatches; you have 16 stevedores working there for half an hour, and that doesn't compare with the demurrage on a car with a ship that has lots of cubic, and lots of 'tween deck space, you can juggle it around so you won't have to have any demurrage.

Q. Would not the fact that a vessel was loading for a period of three weeks, loading for three ports, have a great deal to do with your situation?

A. I don't think it would.

Q. You don't think so? A. No.

Q. You think you could make the same stowage and draw the same stowage plan—

A. I don't think I could make the same stowage I have on this plan, but I could make some stowage plan that would take care of her.

Q. In other words, you would juggle it around?

A. Yes, I would juggle it around, the way they do down on these docks every day. We will be called up three or four times a day and asked the [519] question, "Can you put it here"? "Can you put it there?" You have to juggle it around.

Q. As to this vacant space you have indicated on this ship, you don't know whether that was caused by cancellations, or not, do you?

A. No, I do not.

Q. You don't know anything about that?

A. No. I don't know that it was vacant. They might have used it.

(Testimony of J. W. Jory.)

Q. They might have used all the space up on the "West Aleta"?

A. Yes, they might have used it all up. They might have had very poor stowage. I believe that the stevedores strike was on at that time when they were loading those barrels.

Q. So the manner in which they loaded it might have had a great deal to do with whether there was any vacant space, or not? A. Yes.

Q. And the "West Aleta" might have gone out full? A. Yes.

Q. When you drew that plan of yours, you only took into consideration where it was going, didn't you, and the amount of the commodities?

A. Yes.

Mr. MANNON.—That concludes our case. We have already reserved our objections, as we understand it, to that part of the evidence we deem immaterial, particularly to all the parol evidence which has been offered to affect or vary the bill of lading in any way; also certain of the evidence in the agreed statement of facts. I take it that we have not waived our rights in that connection at all.

The COURT.—It is my understanding that you have not.

Mr. MANNON.—That concludes our case.

Mr. GRAHAM.—That concludes our case also, your Honor.

(By consent, the case was thereupon submitted upon briefs to be filed in 15, 15 and 10.)

[Endorsed]: Filed Jan. 17, 1925. [520]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 23d day of September, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—SEPTEMBER 23, 1925—ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANT.

Pursuant to opinion filed in case No. 17,693, ordered that a decree be entered in favor of libelant. [521]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Respondent.

No. 17,692.

ROSENBERG BROTHERS & COMPANY,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

No. 18,046.

S. L. JONES & COMPANY, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

Before KERRIGAN, District Judge.

Sept. 23, 1925.

J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, all of San Francisco, Calif., Proctors for Libelants.

Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., both of San Francisco, Calif., for Respondent.

MEMORANDUM OPINION. [522]

These three cases, tried together, are suits brought in the names of the shippers and owners of cargo lost on the S.S. "West Aleta," when that

vessel stranded on Terschelling Island, more than five years ago.

The "West Aleta" left San Francisco with a full cargo on January 6, 1920, libelants' shipments were destined for Cardiff, Wales, and Rotterdam, Holland, and consisted of rice, nutmegs, and 15,000 barrels of wine and brandy. Bills of lading were issued in the usual form, in one case naming San Francisco as the port of departure and Cardiff as that of destination, and in the other cases, San Francisco and Rotterdam as such respective ports. In none of them was any reference made to Hamburg, Germany; but inasmuch as each of the libelants had consigned a shipment to that port, they had actual knowledge that the vessel intended to call there. In each case the opening clause of the bill of lading reads as follows:

> "Received in apparent good order and condition . . . . at San Francisco . . . . to be transported by the ship 'West Aleta' . . . . with leave . . . . *to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port* of Cardiff (Rotterdam) . . . . "

Stamped on the face of the instrument is a clause reserving liberty to deviate for trial trips, and in its main body a clause has been inserted to permit deviations "for the purpose of saving life or property." No other provision is made for deviation from the direct route between San Fran-

cisco and the destination named, which in each case, as stated, was Rotterdam or Cardiff.

For reasons of her own, not amounting to necessity, after proceeding safely through the Panama Canal, and across the Carribean Sea and the Atlantic Ocean to the entrance to Bristol Channel, on which Cardiff is situated, the "West Aleta" proceeded through the Straits of Dover into the North Sea. After passing the entrance to Rotterdam harbor, when about one hundred miles beyond that point she stranded on Terschelling Island, [523] and with her cargo became a total loss. Admittedly, she was on her way to Hamburg, a port 750 miles beyond Cardiff, and 250 miles beyond Rotterdam, intending to visit those three ports in the reverse of their geographical order.

At the time of the wreck the North Sea at the mouth of the Elbe was still dangerous for navigation because of the presence of floating mines. The captain of the "West Aleta" appears to have lost his vessel in an endeavor to avoid areas containing such mines, and to have been guilty of faulty navigation in doing so. For this of course no claim can be made; but for his failure to discharge the Cardiff and Rotterdam cargoes before passing those ports, libelants seek to recover their values, relying on the familiar doctrine of deviation to create an absolute liability, in their favor. It is clear that such a liability must be established if a recovery is to be allowed, for the real parties in interest herein are cargo insurers, who have made full payment of losses under their policies, and now stand

subrogated to the claims of the insured. Each of the bills of lading contains a "Benefit of insurance" clause in favor of respondent. Before, however, it can avail itself of this defense, it has cast upon it the burden of explaining the deviation above described, from the natural, direct, and ordinary route.

Respondent's first contention is, that under the "liberty to call" or "deviation" clause above set forth, the "West Aleta" had a right to make the voyage which she was pursuing at the time of her loss.

While it is true that the right of deviation given by this clause is very broad, it nevertheless is not unlimited. The law has, in fact, attached to it a fixed and certain meaning, older than the oldest American court of admiralty, which limits its application to ports substantially on the course of the voyage described, *between its termini and before the port of destination.* Regarding the rule as settled by earlier cases, more than a century ago Lord Mansfield held a general leave "to touch and stay at any ports and places whatsoever without [524] being deemed a deviation," must be confined to ports "in the course of the voyage" to the destination named in a policy of insurance.

"Though at the trial I was struck with the largeness of these words," said the eminent Judge, "as giving liberty to the ship to go any where she pleases, to any island, in any course, it must be confined to the voyage insured, that is, to some port in the course of the voyage to (the ports of

destination); *otherwise I do not see where the is* to end; they might make it last two years, ... and the larger the words are the more necessary is this construction, else the ship might trade and barter without any termination." (Gardner vs. Senhouse, 3 Taunt. 16; 128 Eng. Rep. 7; italics mine.)

I have been referred to no case in this country which impairs the force of this reasoning. It was accepted in Smith vs. United States Shipping Board Emergency Fleet Corporation (2 Fed. 2d 390), and appears to me to be supported by an almost unbroken line of American decisions. (Ardan S. S. Company vs. Thebaud, 35 Fed. 620; Hurlbut vs. Turnure, 76 Fed. 587; affirmed in 81 Fed. (C. C. A.–2) 208; Swift vs. Furness, 87 Fed. 315; The Blandon, 287 Fed. 722; The Willdomino, 300 Fed. 5.)

In Austrian S. S. Company vs. Calafiore (C. C. A.–5), 194 Fed. 377, a vessel on a voyage from Palermo, Italy, to New Orleans, stopped en route at Tampa, Florida, to take on cargo for the return voyage. As a result of the delay libelant's cargo of lemons was damaged. A clause in the bill of lading gave the carrier "Liberty . . . . to proceed to and stay at, any ports or places whatsoever (although in a direction contrary to, or out of, or beyond, the route to said port of discharge), once or oftener, in any order, backwards or forwards, for the purpose of receiving and for delivering coals, cargo or passengers *or for any other purpose;* and all such ports . . . . shall

be deemed within the intended voyage." A broader right of deviation can scarcely be conceived; yet it was held, and I think rightly, that the ship had not stopped at Tampa for the purposes [525] of the voyage, but for those of *another* voyage, to be undertaken after New Orleans, was reached; that such action was unquestionably beyond the contemplation of the shippers at the time *of* the bill of lading was signed; and that the carrier therefore was liable, although as it will be observed, Tampa was on the course of the voyage named in the bill of lading. This is perhaps the extreme example of Lord Mansfield's rule of construction that "the larger the words are the more necessary" does strict construction become. (Gardner vs. Senhouse, *supra.*)

In the present case respondent's testimony indicates that the principal reason why the "West Aleta" was ordered to take the course which she followed, was convenience of the vessel in loading her return cargo.

Smith vs. United States Shipping Board Emergency Fleet Corporation, *supra*, is very much in point here because it involved claims for the loss of other cargo on the same ship and voyage which gave rise to these suits. The only distinction to be made is that there all of the cargo was shipped to Rotterdam; whereas in the cases at bar the greater part of it (in point of value) was destined for Cardiff, and the deviation attempted was greater by a thousand miles than in that case. Judge Augustus Hand concluded there that "The permission

'to touch at any port or ports in any rotation or order, in or out of the customary route' related to stopping in ports on the way to Rotterdam, either in or out of the geographical order."

This, counsel argue, absolute disregards the phrase "out of the customary route," because without the use of these words a ship might touch at any such port, and such a construction deprives them of all meaning. That the words quoted may be redundant to the power which they purport to enlarge, without in fact enlarging it, must of course be granted. The books are full of cases in which language has fallen short of the meaning which it was intended to express. Certainly the entire clause must be construed with the utmost strictness against the carrier (Poor on Charter Parties and [526] Ocean Bills of Lading, No. 69; The Caledonia, 157 U. S. 124, 137; Pacific Coast Steamship Company vs. Bancroft-Whitney Company (C, C, A–9) 94 Fed. 180, 187), and its meaning may not be extended further than its terms can reach.

Badly stated, it gives permission "to touch at any port or ports . . . . in, or out, of, the customary route . . . . unto the port of Cardiff (Rotterdam) . . . . " The phraseology is not "unto, beyond, and back to the port of Cardiff," but simply "unto the port of Cardiff." To have held that there was no deviation from the agreed voyage, it would have been necessary for Judge Hand to adopt an unduly liberal, not to say strained construction of this language.

The general attitude, both of the English and

American courts, toward exemptions such as the one herein may be seen from a *résumé* of the decisions. It had been held that a carrier cannot escape its obligation by reserving liberty for its vessel to go "to any port in the world," or "to any ports or places whatever" (Gardner vs. Senhouse, *supra;* Clason vs. Simmonds, reported 6 T. R. 531; 101 Eng. Repr. 686; Ardan Steamship Company vs. Thebaud, *supra*); whether "in any order" (Le Duc vs. Ward, 20 Q. B. D. 475; The Wells City, 57 Fed. 317; affirmed in (C. C. A.–2) 61 Fed. 857) or "in any rotation" (Margetson vs. Glynn, (1892), 1 Q. B. 337; (1893) A. C. 351); or whether there be added the phrase "whether in geographical order or not" (White vs. Grenada Steamship Company, 13 Times L. R. 1), or the words "although in a direction contrary to, out, of, or beyond the route to said port of discharge" (Austrian Steamship Company vs. "Calafiore," 194 Fed. 377), or those here used, "in, or out of the customary route." (The Willdomino, 300 Fed. 5; Smith vs. United States Shipping Board Emergency Fleet Corporation, *supra.*) The rule to be deduced from these cases is, that in the absence of unambiguous language to the contrary, a deviation clause invariably must be construed to have reference to a particular voyage between the ports of departure and destination named in a policy or a bill of lading, and to have no application to any port or ports not naturally and usually ports of call on the proposed voyage. (Le Duc vs. Ward, *supra.*) [527] Addition of the words "in, or out of the customary

route" may broaden a carrier's right to deviate; but they will not be construed to authorize the initiation of a new voyage before an old one is completed. (Austrian Steamship Company vs. "Calafiore" (C. C. A.–5), 194 Fed. 377. As was stated by Lord Justice Bankes in the English Court of Appeal less than a year ago, "the decision always has been that the general language of which these cases are illustration must be read as controlled by the governing object of the contract, namely, the persecution of the named voyage . . . . " (United States Shipping Board Emergency Fleet Corporation vs. Bunge and Borne, Ltd., 41 T. L. R. 73; affirming 40 Times L. R. 541 (K. B. D.).)

The only question presented, therefore, is one of fact: whether Hamburg is a port which lies substantially on the course of a voyage from San Francisco to Cardiff or Rotterdam; and this question it is impossible to answer in the affirmative.

The next point made by respondent is that there is a well known and fully recognized custom of the port of San Francisco for vessels engaged in the so-called European-Pacific service with ports of discharge in the Hamburg-Bordeaux range to call at those ports (including Hamburg, Rotterdam, and Cardiff) in any order, without regard to their particular geographical location. In passing on this contention, Judge Hand said as follows: "I cannot say that the business usage, whereby no more than 18 ships at most of the respondent had usually proceeded from the Pacific Coast to Hamburg before discharging at Rotterdam, and had only done this

for a period of about a year, can be regarded as a general and uniform custom having the force of law, of which shippers should take notice." (Smith vs. United States Shipping Board Emergency Fleet Corporation, 2 Fed. (2d) 390, 391.) [528]

It is elementary that a custom or usage, to be binding, must be definite, uniform, and well known. Furthermore, it must be established by clear and satisfactory evidence, so that it may be justly presumed that the parties had reference to it in making their contract. (Bowling vs. Harrison, 47 U. S. (6 How.) 248; The Gualala (C. C. A.–9), 178 Fed. 402.) It must in addition to be shown to be long established, reasonable, and generally acquiesced in (Sweet vs. Leach, 6 Ill. App. 212); requirements which are sustained by all of the authorities. (3 Jones on Evidence, No. 462.) If the proof leaves it uncertain, either as to the fact or as to its effect on the matter with which it is related, it is void. (United States Shipping Board Emergency Fleet Corporation vs. Levensaler, 290 Fed. 297.)

Proof was made at the trial that the European Pacific Line did not commence operations until 1919. During the World War there had been no such service at all. A list of sailings which was produced by respondent, shows that there were not 18 vessels engaged in it, as the court was led to believe in the "West Aleta" case, but only 12. The "Effingham," which left San Francisco on December 17, 1919, went to Hamburg before calling at London and Liverpool, but at the time the "West Aleta" sailed had not yet crossed the Atlantic. The

"Orani," which sailed on October 29, 1919, also departed from the geographical order of call, but touched only at ports in the United Kingdom. The "Cocaponset" commenced its voyage only nine days before the departure of the "West Aleta." Of the nine other vessels listed, three had but one port of destination, and six called at several ports, strictly in their natural geographical order.

On such evidence as this, it is impossible to base a finding that there was a practice for vessels in the European Pacific trade to call at European Continental ports out of their geographical order. Its tendency, if it has one, is to prove an opposite practice. The burden was on respondent to establish by clear and satisfactory evidence a custom [529] at and prior to the time at which arrangements were made with respect to the "West Aleta's" cargo, and evidence of the par practice subsequent to that time is clearly incompetent. No usage, as distinguished from a custom, has been shown; for to be legally recognized a usage must be proved to have been assented to by the parties, and to have been so notorious as to be presumed to have been assented to by them. (2 Williston on Contracts, 1276.) The alleged custom invoked by respondent therefore has not been established by the evidence.

Nor is the point well taken, that libelants knew of the intention of the operators of the "West Aleta" to send her to Hamburg before having her proceed to Rotterdam and Cardiff. If there is any rule of law which is settled beyond contradiction, it is the rule that parol evidence is inadmissible to vary

the terms of a written contract. Except where some custom or usage exists, so well established and generally known that it must be taken to be incorporated with the contract, and at the same time not inconsistent with its clearly expressed terms, such evidence must be disregarded. (Le Duc vs. Ward, *supra*; The Delaware, 81 U. S. (14 Wall.) 579; 3 Jones on Evidence, No. 459.) Objection of the strongest nature has been made to the admission of the evidence of custom just referred to, because the deviation clause is plain and unambiguous, with a clear and settled meaning; and cases have been cited which seem conclusive of its inadmissibility. (Grace vs. American Central Insurance Company, 109 U. S. 278; Portland Flouring Mills Company vs. British and Foreign Marine Insurance Company (C. C. A.–9), 130 Fed. 860; *certiorari* denied, 195 U. S. 629.) Apart from this question, however, we have seen that it was entirely insufficient to establish the alleged custom. The proof offered by the respondent, of other facts and circumstances extraneous to the bill of lading, must therefore be disregarded under the rule of evidence adverted to. In other words, all evidence tending to show that libelants had actual knowledge [530] of the proposed itinerary; all evidence of the contents of the newspaper advertisements published before the vessel sailed; in brief, everything tending to indicate that libelants knew or ought to have known of the course (inconsistent with these bills of lading) which was intended to be taken, must be excluded from consideration. (St. Johns N. F.

Shipping Corporation vs. S. A. Companhia Geral Commercial Do Rio de Janeiro, 263 U. S. 119; The Delaware, 81 U. S. (14 Wall.) 579.)

My attention has been called to Judge Partridge's decision in the case of W. R. Grace & Company vs. Toyen Kishen Kabushiki Kaisha, decided as lately as September 15, 1925, and both parties insist that it is decisive here. While it is true that certain language there employed is favorable to respondent's contentions, I think the reasoning of the opinion distinctly favors the libelants.

That case had to do with a shipment of nitrates from Iquique and Antofagasta, Chile, to Honolulu. The vessel, instead of taking the direct route, proceeded northward, stopping at various ports, to San Francisco, and thence to Portland, Oregon, where she completed cargo. Immediately after leaving that port, she was destroyed by fire, and all her cargo was lost. It was not claimed that she should have taken the direct route. On the contrary, libelant's claim was that the "usual and customary" route was northerly to San Francisco, and *thence* directly to Honolulu. Liability as for a deviation was asserted, in spite of a clause of the bill of lading which gave the carrier "liberty to touch at any port or ports . . . . in or out of the customary route," because of the inclusion of Portland in the vessel's itinerary. Judge Partridge held that there was no such liability, and I may say that I think his decision absolutely correct.

After citing numerous cases, including that of "The West Aleta," in which the doctrine of Glynn

v. Margetson, *supra,* has been followed, he stated that the real intent of the [531] contract between shipper and carrier, with which all deviations must be consistent if they are to be excused by a "liberty-to-all" clause, is the main commercial purpose of that contract, and that accordingly the propriety of any particular deviation is a question of fact in each case, with no fixed rule for its determination. With this there can be no quarrel. Whereas in the case then at bar, there is a well-established custom, of which the shipper has knowledge, for vessels bound for a given destination to proceed upon an indirect route, under the terms of even the narrowest "liberty-to-call" clause there would be no liability for doing so; and whether or not a further deviation from that route would be justified by a clause including ports "in, or out of the customary route" is another question, which was not decided by Judge Partridge, because at the time of shipment in the case before him, as was known both to libelants and the general public, the customary route had been changed so as to include the port in question.

Parol evidence is, as he stated, admissible to show what the usual route is, in interpreting the deviation clause, no matter how great its latitude. But it never is admissible to prove knowledge on the part of, or a parol understanding with a shipper that *the particular vessel* will deviate from the route between its port of departure and destination, for this in effect would be to permit a contradiction of the implied provision of every bill of lading that no deviation inconsistent with its general com-

mercial purpose will be undertaken. (Le Duc vs. Ward, *supra.*) In W. R. Grace & Company vs. Toyen Kisen Kabushiki Kaisha, *supra,* it was not a contradiction of the contract of carriage to permit evidence to be given that four of the respondent's vessels, with the advertised intention of changing the customary route, prior to libelant's shipment had returned via Portland. The fact that libelant had personal knowledge of the intention of the vessel on which his goods were to be carried, to pursue that route, was not essential to the result of the case, and must [532] be regarded as purely accidental except in so far as it goes to show a general knowledge of the change in custom. It may be added that if the mere receipt of notice of an intention to deviate, in a manner inconsistent with the terms of a bill of lading, is sufficient to permit a carrier to do so with impunity, the protection of a written instrument is very slight indeed.

Such being the case, it is apparent under the evidence that in proceeding toward Hamburg, the "West Aleta" was guilty of a deviation which made her owner liable as an insurer for the safety of the cargo. At this point, however, the contention is made by respondent, that it is entitled to the full benefit of the insurance paid to libelants for their losses. The rule is well established that a deviation changes the character of a voyage so essentially that a ship owner who had deviated cannot claim the benefit of the terms of a bill of lading. An unjustifiable deviation vitiates or avoids the contract of carriage, and the failure to comply with

what in effect is a condition or warranty not to deviate displaces it. (The Sarnia, 278 Fed. 459, 463; Thorley vs. Orchis Steamship Company (1907), 1 K. B. 660.) In such circumstances, the carrier cannot escape liability by reason of the relieving clauses which have been inserted in the bill of lading for its benefit. (St. Johns N. F. Shipping Corporation vs. S. A. Companhia Geral Do Rio De Janeiro, *supra,* Pacific Coast Steamship Company vs. Youkon Independent Transportation Company (C. C. A.-9), 155 Fed. 29; Carver on Carriage of Goods by Sea, No. 287.) Since it is not a condition precedent to suit for loss, after deviation, that the cargo owner shall have been deprived of his right against the insurer (The Citta Di Messina, 169 Fed. 472, 475; Smith vs. United States Shipping Board Emergency Fleet Corporation, *supra,* this contention of respondent also must fail.

It is further argued that the United States Shipping Board Emergency Fleet Corporation is only suable as a corporation under the "Suits in Admiralty Act" of 1920, under the provisions of which all rights of action are barred. [533] On exceptions to the libels in these cases, Judge Patridge held that the suits were not barred or effected by the provisions of that act (Rosenberg Brothers & Company vs. United States Shipping Board Emergency Fleet Corporation, 295 Fed. 372), and such was Judge Hand's opinion in "The West Aleta," *supra.* I think the question requires no further discussion.

The final contention that laches are imputable to libelants is without merit, for the reason that

these suits were brought well within the 4-year period of limitations prescribed by the California statute. A court of admiralty sitting in this state will by analogy follow its statutes of limitations (Pacific Coast Steamship Company vs. Bancroft-Whitney Company, *supra*), and according to those there have been no laches here.

As the measure of damages for failure to deliver cargo is the market value of the goods at the port of destination at the time the vessel should have arrived (36 Cy. 275; St Johns N. F. Shipping Corporation vs. S. A. Companhia Geral Do Rio De Janeiro, *supra;* Carver on Carriage of Goods by Sea, 6 ed., No. 727), libelants are entitled to recover the values set forth in the agreed statements of fact. It is therefore ordered that decrees issue in favor of libelant California Wine Association for the sum of $642,871, interest, and costs; in favor of libelant Rosenberg Brothers & Company for the sum of $20,782.79, interest, and costs; and in favor of libelant S. L. Jones & Company for the sum of $4,481.66, interest, and costs.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed Sep. 23, 1925. [534]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,692.

ROSENBERG BROS. & CO. (a Corporation),
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),
Respondent.

FINAL DECREE.

The above-entitled cause came on regularly for hearing December 29, 30 and 31, 1924, and January 2, 6 and 7, 1925, before Honorable Frank H. Kerrigan, United States District Judge. Libelant appeared by J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, its proctors, and respondent appeared by Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., its proctors.

Evidence oral and documentary was introduced, briefs were filed and the cause was submitted to the Court for decision. The Court being fully advised in the premises filed its decision and opinion herein, holding and deciding that libelant should recover from respondent the sum of Twenty Thousand Seven Hundred Eighty-two and Seventy-nine Hundredths (20,782.79) dollars, together with

interest at the rate of seven (7) per cent per annum thereon from February 15, 1920, which said interest at the date hereof [535] amounts to the sum of Eight Thousand and One Hundred Fifty-four and 80/100 (8,154.80) Dollars, and costs.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant above named, Rosenberg Bros. & Co. (a corporation), do have and recover from respondent, United States Shipping Board Emergency Fleet Corporation (a corporation), the sum of Twenty-eight Thousand Nine Hundred Thirty-seven and 59/100 (28,937.59) Dollars, together with interest thereon at the rate of seven (7) per cent per annum from the date of this decree until paid, together with costs to be hereafter taxed.

Dated this 24th day of September, 1925.

FRANK H. KERRIGAN,
United States District Judge.

Approved as to form, and five (5) days' lodging with the Court waived.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Entered in Vol. 19, Judg. and Decrees, at page 293.

[Endorsed]: Filed Sep. 24, 1925. [536]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

MOTION TO MODIFY FINAL DECREE.

Now comes the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent in the above-entitled matter, appearing by its proctors, Ira S. Lillick and Chalmers G. Graham, and makes this its motion to modify, in the manner hereinafter set forth, the final decree in the above matter entered and filed the 24th day of September, 1925.

Said respondent moves that said decree, now providing for interest at the rate of 7% per annum, be modified and changed to provide for interest at the rate of 4% per annum.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

To Rosenberg Bros. & Co. and to J. M. Mannon, Jr., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Green, Its Proctors:

You and each of you will please take notice that the above-entitled motion will be called for hearing on Saturday, the 24th day of October, 1925, or as soon thereafter as proctors [537] for the respondent may be heard, in the courtroom of the above-entitled court, Postoffice Building, Seventh

and Mission Streets, in the City and County of San Francisco, State of California.

Dated this 23d day of October, 1925.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Receipt of a copy of the within motion and notice is hereby admitted this 23d day of Oct., 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Oct. 23, 1925. [537½]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—OCTOBER 26, 1925—ORDER DENYING MOTION TO MODIFY FINAL DECREE.

The motion to modify the decree herein, heretofore heard and submitted, being now fully considered, it is ordered that said motion be and same is hereby denied. [538]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

NOTICE OF APPEAL.

To Rosenberg Brothers & Company, a Corporation, Libelant in the Above-entitled Cause, and to J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division:

You, and each of you, will please take notice, that the United States Shipping Board Emergency Fleet Corporation, respondent in the above-entitled cause, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, in Admiralty, entered in said cause on the 24th day of September, 1925, ordering, adjudging and decreeing that libelant, Rosenberg Brothers & Company, a corporation, recover the amount sued for by reason of the matters alleged in the libel in said cause with interest and costs and finding the amount due to said libelant to be the sum of $28,937.59, with costs, and interest thereon from that date of said decree.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Dated: San Francisco, California, the 9th day of November, 1925. [539]

Due service and receipt of a copy of the within notice of appeal is hereby admitted the 13th day of November, 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,

Proctors for Libelant.

[Endorsed]: Filed Nov. 13, 1925. [540]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

ASSIGNMENTS OF ERROR.

Comes now the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent and appellant in the above-entitled cause (hereinafter termed "Fleet Corporation") and assigns error in the conclusions, findings, proceedings and decree of the District Court, as follows:

I.

That the District Court erred in ordering and entering a decree in favor of Rosenberg Brothers & Company a corporation, libelant and appellee above named against the Fleet Corporation, respondent and appellant above named, for the recovery from said respondent and appellant of the principal sum of $20,782.79, together with interest thereon at the rate of 7% per annum from the 15th day of February, 1920, to the 24th day of Septem-

ber, 1925, in the further sum of $8,154.80, together with interest and costs thereon.

II.

That the District Court erred in not dismissing the libel of Rosenberg Brothers & Company against the Fleet Corporation. [541]

III.

That the District Court erred in holding that the law has attached a fixed and certain meaning to the following liberty to call clause:

> "Received in apparent good order and condition * * * at San Francisco, * * * to be transported by the ship 'West Aleta' * * * *with leave * * * to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port of Cardiff (Rotterdam)* * * ."

IV.

That the District Court erred in holding that under such a clause the vessel did not have the liberty to proceed beyond the port of discharge named in the bill of lading and that the vessel under such a clause is limited in the application of the clause "to ports substantially on the course of the voyage described between its termini and before the port of destination."

V.

That the District Court erred in finding that the principal reason that the "West Aleta" took the course she followed on her voyage was convenience of the vessel in loading return cargo.

VI.

That the District Court erred in holding that the only distinction between the facts in the above-entitled cause and that of Smith vs. U.S.S.B.E.-F.C. (2 Fed. (2d) 390) is that in the present case the greater part of the cargo was destined for Cardiff whereas in that case all of the cargo was shipped to Rotterdam.

VII.

That the District Court erred in holding that the phrase in the bill of lading before the court in this case "out [542] of the customary route" did not extent the liberties otherwise given in the said bill of lading.

IX.

That the District Court erred in holding that the liberties clause herein relied upon must be construed with reference to a particular voyage named in a particular bill of lading which covers only a part of the cargo between the ports of departure and the ports of destination named in the said bill of lading.

X.

That the District Court erred in holding that the voyage described in the said bill of lading was a specific one and covered the shortest geographical distance between the ports of departure and the ports of destination named therein.

XI.

That the District Court erred in holding that the liberties clause herein relied upon had no

application to any port or ports not naturally and usually ports of call on the voyage.

XII.

That the District Court erred in holding that in proceeding on the voyage in which the "West Aleta" was at the time of her loss the vessel was initiating a new voyage before an old voyage was completed.

XIII.

That the District Court erred in holding that the only question present was one of fact, namely: whether Hamburg is a port on the course of a voyage from San Francisco to Cardiff or Rotterdam.

XIV.

That the District Court erred in holding that the [543] custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XV.

That the District Court erred in holding that evidence of the custom was inadmissible, and in excluding the same from consideration.

XVI.

That the District Court erred in holding that the liberties clause is plain and unambiguous, and in holding that the words "out of the customary route" are plain and unambiguous.

XVII.

That the District Court erred in holding that knowledge of the libelant that the "West Aleta"

was to proceed to Hamburg before Rotterdam and Cardiff was unimportant.

XVIII.

That the District Court erred in holding that facts and circumstances extraneous to the bill of lading must be disregarded.

XIX.

That the District Court erred in holding that all evidence tending to indicate that the libelant knew or ought to have known of the course which was intended to be taken by the "West Aleta" must be excluded.

XX.

That the District Court erred in holding that evidence tending to prove knowledge on the part of a shipper that a particular ship will deviate from a route is inadmissible, and in excluding the same from consideration.

XXI.

That the District Court erred in holding that the [544] "West Aleta" deviated in proceeding to Hamburg before she had discharged her Cardiff and Rotterdam cargo.

XXII.

That the District Court erred in holding that the "West Aleta" in so proceeding to Hamburg before discharging her Cardiff and Rotterdam cargo, under the circumstances of this case, made the respondent and appellant an insurer of the said cargo.

XXIII.

That the District Court erred in holding that

the Fleet Corporation was not entitled to the benefit of the insurance paid to Rosenberg Brothers & Company.

XXIV.

That the District Court erred in holding that the custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XXV.

That the District Court erred in holding that a deviation avoids the contract of carriage.

XXVI.

That the District Court erred in holding that it was not a condition precedent to suit for loss against a carrier for deviation that the cargo owner had been deprived of its right against its insurer.

XXVII.

That the District Court erred in not holding that the Fleet Corporation was only suable in admiralty under the provisions of the "Suits in Admiralty Act of 1920."

XXVIII.

That the District Court erred in not holding that the suit of Rosenberg Brothers & Company was barred under the [545] provisions of Section 5 of the Suits in Admiralty Act of 1920.

XXIX.

That the District Court erred in not holding that the suit of Rosenberg Brothers & Company was barred by laches.

XXX.

That the District Court erred in holding that the "West Aleta" was a vessel operated by the Fleet Corporation.

XXXI.

That the District Court erred in awarding the libelant Rosenberg Brothers & Company interest at the rate of 7% per annum.

XXXII.

That the District Court erred after holding that the libelant was entitled to interest, in not awarding the libelant interest at the rate of 4% per annum as provided in Section 3 of the Suits in Admiralty Act of 1920.

XXXIII.

That the District Court erred in not holding that the burden was on the libelant of proving what was the "customary route."

XXXIV.

That the District Court erred in not holding that the burden was on the libelant of proving that the "West Aleta" departed from the "customary route," and in so doing exceeded the privileges given in the liberties clause when she proceeded toward Hamburg as her first port of call.

XXXV.

That the District Court erred in not holding that the libelant herein had failed to prove that the "West Aleta" departed from the customary route. [546]

XXXVI.

That the District Court erred in not holding that under the terms and provisions of Section 3 of

the Harter Act the Fleet Corporation was not an insurer.

XXXVII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted from faults or errors in navigation or in the management of said vessel.

XXXVIII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta, in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted and arose from dangers of the sea and/or other navigable waters and/or acts of God.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant.

Due service and receipt of a copy of the within Assignment of Errors is hereby admitted this 23rd day of December, 1925.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
EDWARD J. McCUTCHEN,
Proctors for Libelant. [547]

[Endorsed]: Filed Dec. 23, 1925. [548]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

STIPULATION EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1925, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause that the time for the filing of the assignment of errors, and apostles on appeal may be, and the same hereby is, extended to and including the 15th day of December, 1925.

EDWARD J. McCUTCHEN.
J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
IRA S. LILLICK.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1925. [549]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 4, 1926, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and be-

tween the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same hereby is, extended to and including the 4th day of January, 1926.

McCUTCHEN, OLNEY, MANNON & GREENE.

IRA S. LILLICK.

It is so ordered.

_____,

United States District Judge.

[Endorsed]: Filed Dec. 23, 1925. [550]

In the Southern Division of the United States District Court, for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET, a Corporation,

Respondent.

No. 17,692.

ROSENBERG BROTHERS & COMPANY, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET, a Corporation,

Respondent.

No. 18,046.

S. L. JONES & COMPANY, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET, a Corporation,

Respondent.

STIPULATION AND ORDER RE RECORD ON APPEAL.

IT IS HEREBY STIPULATED by and between the respective parties hereto that the appeals in the above-entitled causes may be heard together upon one and the same record.

IT IS FURTHER STIPULATED by and between the parties hereto that all testimony, depositions and exhibits in the above-entitled causes may be included in one record [551] for the purposes of the appeals in said causes.

Dated the 18th day of November, 1925.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
Proctors for Libelants.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

San Francisco, California, the 18th day of November, 1925.

It is so ordered.

A. F. ST. SURE.
District Judge.

[Endorsed]: Filed Nov. 18, 1925. [552]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,692.

ROSENBERG BROS. & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

No. 18,046.

S. L. JONES & CO., a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

STIPULATION RE TRANSMISSION OF ORIGINAL EXHIBITS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that all exhibits introduced in evidence in the above-entitled causes in the District Court may be sent up to the United States Circuit Court of Appeals

for the Ninth Circuit in their original form as original exhibits. [553]

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
Proctors for Libelants and Appellees.
IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant.

[Endorsed]: Filed Dec. 30, 1925. [554]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,692.

ROSENBERG BROS. & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation.
Respondent.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

No. 18,046.

S. L. JONES & CO., a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation.

Respondent.

STIPULATION RE OMISSION OF CERTAIN EXHIBITS FROM TRANSCRIPT ON APPEAL.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause that the agreed statement of facts in the first above-entitled case (No. 17,692) shall, together with all the exhibits attached thereto, be set out in full in the transcript on appeal and shall, together with such exhibits, be printed in full in the record to be prepared by the Clerk of the Circuit Court of Appeals. [555]

IT IS FURTHER STIPULATED AND AGREED that there need not be included in the transcript on appeal, nor in said printed record, certain exhibits attached to the agreed statement of facts in the second above-entitled case (No. 17,693), for the reason that said certain exhibits are identical with certain exhibits attached to the agreed statement of facts in case No. 17,692 as follows, to wit:

Exhibit "A" in case No. 17,693, being identical with Exhibit "A" in case No. 17,692;

Exhibit "B" in case No. 17,693, being identical with Exhibit "B" in case No. 17,692;

Exhibit "E" in case No. 17,693, being identical with Exhibit "E" in case No. 17,692;

Exhibit "F" in case No. 17,693, being identical with Exhibit "F" in case No. 17,692;

Exhibit "G" in case No. 17,693, being identical with Exhibit "G" in case No. 17,692.

IT IS FURTHER STIPULATED AND AGREED that there need not be included in the transcript on appeal, nor in said printed record, certain exhibits attached to the agreed statement of facts in the third above-entitled case (No. 18,046), for the reason that said certain exhibits are identical with certain exhibits attached to the agreed statement of facts in case No. 17,692, to wit:

Exhibit "A" in case 18,046, being identical with Exhibit "A" in case No. 17,692;

Exhibit "B" in case 18,046, being identical with Exhibit "B" in case No. 17,692;

Exhibit "D" in case No. 18,046, being identical with Exhibit "E" in Case No. 17,692; [556]

Exhibit "E" in case No. 18,046, being identical with Exhibit "F" in case No. 17,692;

Exhibit "F" in case No. 18,046, being identical with Exhibit "G" in case No. 17,692.

IT IS FURTHER STIPULATED AND AGREED that the sailing orders attached to respondents' answers to interrogatories propounded by libelant in the first above-entitled case (No. 17,692) shall be included in the transcript and shall be printed in the record to be prepared by the Clerk of the Circuit Court of Appeals, but that the copy of the same document which is attached to the answers of respondents in the second and third above-entitled cases may be omitted, for the reason that the document is identical in each case.

IT IS FURTHER STIPULATED AND AGREED that, in each place where the omission occurs in the transcript on appeal and in the printed record to be prepared by the Clerk of the Circuit Court of Appeals, the reason for the omission shall be noted at the place where such omission occurs and reference made to the page where the identical document appears elsewhere in the transcript.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS,
Proctors for Libelants.
IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

[Endorsed]: Filed Dec. 30, 1925. [557]

In the Southern Division of the United States District Court, Northern District of California, Third Division.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation, Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

STATEMENT OF CLERK U. S. DISTRICT COURT.

PARTIES.

Libelant: California Wine Association, a Corp.
Respondent: United States Shipping Board Emergency Fleet Corporation, a Corp.

PROCTORS.

For Libelant: J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and McCutchen, Olney, Mannon & Greene.
For Respondent: Ira S. Lillick, Esq.

PROCEEDINGS.

1922.

Oct. 25. Filed libel, with interrogatories attached. Issued citation, which was returned executed.

1923.

May 10. Filed exceptions to libel. [558]

May 21. Ordered exceptions to libel submitted (Hon. John S. Partridge, Judge.)

Dec. 26. Filed opinion. Ordered exceptions to libel overruled.

1924.

Feb. 19. Filed answer of respondent, with answers to interrogatories propounded to respondent; also, interrogatories propounded to libelant.

Jun. 17. Filed answers to interrogatories propounded to libelant.

Nov. 20. Filed agreed statement of facts.

Dec. 29. Filed deposition of Walter M. Strong.
Hearing issues (Hon. Frank H. Kerrigan, Judge). Hearing resumed on Dec. 30, 31, Jan. 2, 6, and submitted on January 7th, 1925.

1925.

Jan. 17. Filed six volumes of testimony.

Sept. 23. Filed opinion. Ordered decree entered in favor of libelant.

Sept. 24. Filed final decree.

Oct. 23. Filed motion to modify decree.

Oct. 26. Ordered motion to modify decree denied.

Nov. 13. Filed notice of appeal.
Filed bond for costs on appeal.

Nov. 18. Filed stipulation and order regarding record on appeal.

Dec. 11. Filed motion to stay execution.
Filed affidavit of Chalmers G. Graham.

Dec. 14. Ordered motion to stay execution submitted.

Dec. 23. Filed assignment of errors.
Filed praecipe for apostles on appeal.

[559]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

LIBEL IN PERSONAM.

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court, for the Northern District of California:

The libel of California Wine Association, a corporation, against United States Shipping Board Emergency Fleet Corporation, a corporation, a cause of contract and deviation, civil and maritime, respectfully shows:

FIRST CAUSE OF LIBEL.

I.

That libelant is and at all times herein mentioned

was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue [560] of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business in said state at 369 Pine Street in the City and County of San Francisco.

That at all time herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel.

III.

That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent eleven thousand (11,000) barrels of wine for carriage, by said steamer "West Aleta" as a common carrier of merchandise by sea, upon a voyage to Cardiff, Wales, and delivery there in like good order and condition unto the order of said libelant. That respondent duly received said eleven thousand (11,000) barrels of wine on board said steamer as such common carrier of merchandise by sea and agreed to carry the same by said

steamer to Cardiff, Wales, and there to deliver said wine as aforesaid.

IV.

That respondent duly issued its bills of lading on account of the said shipment on the dates and for the quantities following, to wit:

(1) On the thirty-first day of December, 1919, for fifteen hundred (1500) barrels.

(2) On the thirty-first day of December, 1919, for fifteen hundred (1500) barrels.

(3) On the thirty-first day of December, 1919, for five hundred (500) barrels.

(4) On the thirty-first day of December, 1919, for five hundred (500) barrels. [561]

(5) On the third day of January, 1920, for one thousand (1,000) barrels.

(6) On the third day of January, 1920, for two thousand (2,000) barrels.

(7) On the third day of January, 1920, for three hundred (300) barrels.

(8) On the third day of January, 1920, for one thousand (1,000) barrels.

(9) On the sixth day of January, 1920, for eight hundred (800) barrels.

(10) On the sixth day of January, 1920, for one thousand nine hundred (1,900) barrels.

V.

That the full amount of freight charged and due for said shipment was the sum of one hundred fourteen thousand eight hundred twenty-six and thirty-eight one hundredths (114,826.38) dollars, which sum libelant prepaid.

VI.

That on or about the 6th day of January, 1920, said steamer "West Aleta," having on board said eleven thousand (11,000) barrels of wine, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage to said port of Cardiff, Wales, said vessel, with the knowledge and privity of respondent, and pursuant to respondent's orders and directions, deviated from said voyage and proceeded on an entirely different voyage to the Port of Hamburg, Germany; that during the course of said deviation and after the said steamer "West Aleta" had passed far beyond the said port of Cardiff without entering said port, she stranded upon Terschelling Island (in the North Sea) and became a total loss.

VII.

That by reason of said deviation, stranding and loss of the said steamer "West Aleta" the said eleven thousand (11,000) [562] barrels of wine were totally lost, except a portion thereof which was saved at an expense to the said libelant greater that the value thereof, all to the damage of said libelant in the sum of four hundred fifty-six thousand nine hundred and fifty-five (456,955) dollars.

SECOND CAUSE OF LIBEL.

I.

That libelant is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business in said state at 369 Pine Street in the City and County of San Francisco.

That at all times herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel.

III.

That libelant heretofore, and, to wit, on or about between the 31st day of December, 1919, and the 6th day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent, eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine, for carriage by said steamer "West Aleta," as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said [563] libelant; that respondent duly received said eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine on board said steamer as such common carrier of merchandise by sea, and agreed to carry the same

by said steamer to Rotterdam, Holland, and there to deliver said brandy and wine, as aforesaid.

IV.

That respondent duly issued its bills of lading on account of said shipment on the dates and for the quantities of wine and brandy following, to wit:

(1) On the thirty-first day of December, one thousand nine hundred and nineteen, for one hundred (100) barrels on wine.

(2) On the thirty-first day of December, one thousand nine hundred and nineteen, for five hundred (500) barrels of wine.

(3) On the third day of January, one thousand nine hundred and twenty, for seven hundred and fifty (750) barrels of wine.

(4) On the third day of January, one thousand nine hundred and twenty, for one hundred (100) barrels of wine.

(5) On the sixth day of January, one thousand nine hundred and twenty, for one thousand (1,000) barrels of wine.

(6) On the sixth day of January, one thousand nine hundred and twenty, for five hundred and forty-two (542) barrels of wine.

(7) On the sixth day of January, one thousand nine hundred and twenty, for eight hundred and fifty (850) barrels of brandy.

(8) On the sixth day of January, one thousand nine hundred and twenty, for ninety (90) barrels of brandy.

(9) On the sixth day of January, one thousand

nine hundred and twenty, for one hundred and one (101) barrels of brandy.

(10) On the sixth day of January, one thousand nine hundred and twenty, for sixty-seven (67) barrels of brandy. [564]

V.

That the full amount of freight charged and due for said shipment was the sum of forty-four thousand five hundred and ten and thirty-one one-hundredths (44,510.31) dollars, which sum libelant prepaid.

VI.

That on or about the 6th day of January, 1920, said steamer "West Aleta," having on board said eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage to said port of Rotterdam, Holland, said vessel, with the knowledge and privity of respondent, and pursuant to respondent's orders and directions, deviated from said voyage and proceeded on an entirely different voyage to the port of Hamburg, Germany; that during the course of said deviation and after the said steamer "West Aleta" had passed far beyond the said port of Rotterdam, without entering said port, she stranded upon Terschelling Island (in the North Sea) and became a total loss.

VII.

That by reason of said deviation, stranding and loss of the said steamer "West Aleta," the said

eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine were totally lost, except a portion thereof which was saved at an expense to the said libelant greater than the value thereof, all to the damage of said libelant in the sum of one hundred and eighty-five thousand nine hundred and sixteen (185,916) dollars.

WHEREFORE, libelant prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction and in accordance with acts of Congress in such cases made and provided [565] may issue to and against the said respondent, the United States Shipping Board Emergency Fleet Corporation, citing and admonishing it to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to pronounce for and award to libelant its damages aforesaid, with interest and costs, and will enter a decree for said damages, interest and costs in favor of libelant and against respondent, and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS.
McCUTCHEON, OLNEY, WILLIARD, MANNON & GREENE,
Proctors for Libelant. [566]

State of California,
City and County of San Francisco,—ss.

R. Sciaroni, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary of California Wine Association, a corporation, libelant in the above-entitled cause; that said California Wine Association is a corporation duly organized and existing under and by virtue of the laws of the State of California; that affiant makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge of information are documents, correspondence and papers coming to his attention as such officer of said corporation.

R. SCIARONI.

Subscribed and sworn to before me this 18th day of October, 1922.

[Seal] E. COURAY,
Notary Public in and for the City and County of San Francisco, State of California. [567]

INTERROGATORIES ADDRESSED TO RESPONDENT TO BE ANSWERED BY IT UNDER OATH.

First Interrogatory.

Did respondent, or its agents, give the steamer

"West Aleta," or its officers, any sailing orders prior to its departure from San Francisco, California, on or about the sixth day of January, 1920?

Second Interrogatory.

If the answer to the foregoing first interrogatory shall be in the affirmative, attach a true and correct copy of said sailing orders to the answer to these interrogatories.

Third Interrogatory.

Did respondent or its agents at any time or times prior to departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, instructions or directions in writing, other than said sailing orders, respecting the ports of call of said vessel upon the voyage about to be commenced, or respecting the order of calling thereat?

Fourth Interrogatory.

If the answer to the foregoing third interrogatory shall be in the affirmative, attach true and correct copies of all said order, instructions and directions to the answer to these interrogatories.

Fifth Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, directions, or instructions, in any other way than in writing, respecting [568] the ports of call of said vessel upon the

voyage about to be commenced, or respecting the order of calling thereat?

Sixth Interrogatory.

If the answer to the foregoing fifth interrogatory shall be in the affirmative, state fully what all said orders, instructions and directions were.

Seventh Interrogatory.

After the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage or the order of calling at said ports?

Eighth Interrogatory.

If the answer to the foregoing seventh interrogatory shall be in the affirmative, attach true and correct copies of said orders, instructions and directions to the answer to these interrogatories.

Ninth Interrogatory.

After the departure of said vessel from San Francisco, California, on or about the sixth of January, 1920, did respondent or its agents give any orders, instructions or directions in any other way than in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage, or the order of calling at said ports?

Tenth Interrogatory.

If respondent's answer to the foregoing ninth interrogatory shall be in the affirmative, state fully what said orders, instructions and directions were and how given.

Eleventh Interrogatory.

What was the first port of call of said steamer [569] "West Aleta" on the voyage from San Francisco, California, leaving on or about the sixth day of January, 1920?

Twelfth Interrogatory.

To what first port of call was said steamer "West Aleta" bound at the time of her stranding in or about the month of February, 1920?

J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, WILLARD, MANNON, & GREENE.

[Endorsed]: Filed Oct. 25, 1922. [570]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

EXCEPTIONS TO LIBEL.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

Now comes the United States Shipping Board Emergency Fleet Corporation, above-named respondent, appearing herein by its proctor, Ira S. Lillick, and excepts to the libel, and each alleged cause of libel therein contained, on file herein, upon the following grounds:

I.

That neither said libel, nor either of the alleged causes of libel set forth therein, state facts sufficient

to constitute a cause of libel against respondent herein. [571]

II.

That neither said libel, nor either of the alleged cause of libel set forth therein, state facts sufficient to confer jurisdiction upon this Court, and said Court is without jurisdiction of the matters contained in said libel, and each count thereof.

Further excepting to said libel, and particularly to the first alleged cause of libel therein contained, respondent specifies:

I.

That said first alleged cause of libel fails to state facts sufficient to constitute a cause of libel against respondent herein.

II.

That said alleged cause of libel fails to state facts sufficient to confer jurisdiction upon this Court, and said Court is without jurisdiction over the matters contained therein.

III.

That said alleged cause of libel fails to allege that the steamship "West Aleta" was employed, and/or operated, as a merchant vessel at the time of the filing of said libel, or at the commencement of the said cause of action therein contained.

IV.

That at the time of the filing of said libel herein, the steamship "West Aleta" was not within the Northern District of California, nor within the jurisdiction of this Court. [572]

V.

That at the time of the filing of this libel herein,

the Steamship "West Aleta" was not within the territorial limits of the United States, nor of its possessions, nor within the jurisdiction of this Court.

VI.

That at the time of filing of said libel herein, more than one year had elapsed since the coming into effect of that certain Act of Congress, known as Suits in Admiralty Act, March 9, 1920, and particularly Section 5 thereof, and that by and under the provisions of said Act, the said alleged causes of libel set forth in said libel, and each thereof, are barred.

VII.

That said libel, and particularly the first count thereof, is insufficient, in the following:

(a) That it cannot be ascertained from Article III therein contained upon what route respondent agreed to carry, and/or transport, the merchandise specified therein to Cardiff, Wales.

(b) That it cannot be ascertained from Article VI therein contained what voyage is meant by the agreed voyage to said port of Cardiff, Wales.

(c) That it cannot be ascertained from Article VI therein contained whether or not the port of Hamburg, Germany, was a port of call, to which said Steamer "West Aleta" was privileged to call on the voyage agreed upon in the bill of lading. [573]

Further excepting to said libel, and particularly to the second alleged cause of libel therein contained, respondent specifies:

I.

Said respondent hereby refers to paragraphs I, II, III, IV, V and VI of its exceptions to the first alleged cause of libel herein contained, and incorporates each and all of said paragraphs, as though fully set forth herein.

II.

That said libel, and particularly the second cause thereof, is insufficient, in the following:

(a) That it cannot be ascertained from Article III therein contained what route respondent agreed to carry and/or transport the merchandise therein specified to Rotterdam, Holland.

(b) That it cannot be ascertained from Article VI therein contained what voyage is meant by the agreed voyage to said port of Rotterdam, Holland.

(c) That it cannot be ascertained from Article VI therein contained whether or not the port of Hamburg was a port of call, to which said steamer "West Aleta" was privileged to call on the voyage agreed upon in the bill of lading.

WHEREFORE, respondent prays that said libel herein be dismissed, and that respondent have judgment for its costs of suit herein.

IRA S. LILLICK,
Proctor for Respondent.

Receipt of a copy of the within exceptions to libel is hereby admitted this 10 day of May, 1923.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctor for Libelant.

[Endorsed]: Filed May 10, 1923. [574]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 26th day of December, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM H. HUNT, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 26, 1923—ORDER OVERRULING EXCEPTIONS TO LIBEL.

Pursuant to opinion this day filed in the cause of Rosenberg Bros. & Co., etc., vs. United States Shipping Board Emergency Fleet Corp., a Corp., No. 17,692, IT IS ORDERED that the exceptions to the libel heretofore submitted herein be and the same are hereby overruled, with 10 days allowed to answer. [575]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 17,693.

ANSWER.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

The answer of United States Shipping Board Emergency Fleet Corporation, a corporation, re-

spondent herein, in a cause of contract, civil and maritime, admits, denies and alleges, as follows:

I.

Answering unto Articles I and II of the first alleged cause of libel, respondent admits the allegations therein contained.

II.

Answering unto Article III of the said first alleged cause of libel, and particularly unto the allegation therein that on or about between the 31st day of December, 1919, and the 6th day of January, 1920, California Wine Association, a corporation, delivered in good order and condition at San Francisco, California, [576] 11,000 barrels of wine for carriage by the steamer "West Aleta," as alleged therein, respondent is ignorant so that it can neither deny nor admit the same, wherefore it calls for strict proof, if relevant.

Said respondent denies that said 11,000 barrels of wine, or any of them, were delivered in good order, and/or condition aboard the steamer "West Aleta," but alleges that it was agreed, under the terms of the bill of lading, that said 11,000 barrels of wine were shipped in apparent good order and condition on board the steamer "West Aleta," and not otherwise.

Respondent denies that said 11,000 barrels of wine were to be transported, and/or delivered, in like good order, and/or condition, as alleged in said article, but in this behalf admits the 11,000 barrels of wine were to be carried upon the said Steamer and delivered at the port of Cardiff, Wales, in accordance with the terms and conditions of cer-

tain bills of lading issued for said shipment, and that, among other things, said bills of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in the said bills of lading at the Port of Cardiff, Wales.

III.

Answering unto Article IV of the said first alleged cause of libel, respondent admits the issuance of its bills of lading on account of said shipments on the dates and for the quantities as alleged in the article, but in this behalf respondent refers to the said original bills of lading and demands that the libelant be required to produce said bills of lading upon the trial.

IV.

Answering unto the allegations of Article V of the said first alleged cause of libel, respondent admits the same. [577]

V.

Answering unto Article VI of the said first alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the steamer "West Aleta'" having on board the said 11,000 barrels of wine sailed from the port of San Francisco, California, but denies that pursuant to respondent's order, and/or directions, and/or otherwise, and/or at all, that said steamer "West Aleta" deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different voyage to the port of Hamburg, Germany, but in this behalf respondent alleges that

by and under the terms and conditions of the bills of lading it was agreed, among other things, that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

VI.

Answering unto Article VII of the said first alleged cause of libel, respondent denies that the said 11,000 barrels of wine were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but in this behalf respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in the said article, respondent alleges that it has no knowledge or information sufficient [578] to enable it to answer the same, so that it can neither admit nor deny said allegations, and therefore calls for strict proof thereof, if relevant.

VII.

Further answering said libel, and particularly the first alleged cause of libel, respondent alleges that at all of the times in the libel mentioned, prior

to said stranding, due diligence had been exercised to make the said steamer "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, and the said steamer was at all of the said times in fact in all respects seaworthy and properly manned, equipped and supplied.

VIII.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent alleges that, among other things, in and by the terms of said bills of lading, it was mutually agreed that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once," and in this behalf respondent alleges that at the time of the said stranding of the steamer "West Aleta" upon Terschelling Island, the said steamer was en route to the port of Hamburg, Germany, as a regular port of call under and by virtue of the terms of the bill of lading herein, and as a further and separate defense, said bill of lading further provides, in part, as follows:

"Clause 2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100.) as the weight of such fraction bears to

one short ton) [579] each short ton that is shipped being represented and agreed by the shippers as being of no greater value than One Hundred Dollars ($100.) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper, and a bill of lading given and agreed therefor stating such greater value."

"Clause 8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting *from faults or errors in navigation,* or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from

unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness."

"Clause 10. Also, that in case the carrier is liable for loss or damage to any [580] goods or merchandise under this bill of lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in

part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or *if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery.* No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or *if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.*"

"Clause 11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any *insurance* that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods."

"Clause 14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and

capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise."

IX.

Further answering unto said libel, and as a separate defense thereto, respondent alleges that any damage to, or loss of [581] cargo was caused by one or more, and/or combination of two or more of the risks, and/or perils excepted in said bill of lading, and/or by the provisions of the Act of Congress of the United States, approved February 13, 1893, commonly know as the Harter Act.

X.

Further answering said first alleged cause of libel, respondent alleges that no value greater than $100.00 for any one package, and/or for each short ton, or fraction thereof, was stated by the shipper, nor was there any agreement stating any greater value.

XI.

Further answering said first cause of libel, and as a separate defense thereto, respondent alleges that no claim was presented in writing within the time limited in Clause 10 of the bill of lading, nor was any suit commenced under the bill of lading, or in respect of said shipment of goods, within the time limited in Clause 10 of the bill of lading, under which said goods were shipped and that, by reason thereof, any claims under said bills of lading, or in respect of said goods, were waived,

and became barred, and the carrier was discharged therefrom.

XII.

Further answering said alleged first cause of libel, respondent alleges that the said 11,000 barrels of wine were insured, and respondent claims the benefit thereof, and such deduction from any claim herein as is equal to the amount of any payment or loan made in respect of said shipment of wine by reason of any such insurance.

XIII.

Further answering unto said first alleged cause of libel, respondent hereby refers to the bills of lading under which [582] said goods were shipped, and prays that the libelant be compelled to produce the same at trial, and refers to each and all of the terms and conditions of said bills of lading, as though said bills of lading were attached hereto, and made a part hereof.

XIV.

Further answering said alleged first cause of libel, and as a separate defense thereto, respondent alleges that it did not agree to carry said 11,000 barrels of wine on any particular route, and/or to any port of call in any particular order and, in this behalf alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order in or out of the customary route."

SECOND CAUSE OF LIBEL.

I.

Answering unto Article III of the said second alleged cause of libel, respondent admits the allegations therein contained.

II.

Answering unto Article III of the said second alleged cause of libel, and particularly unto the allegation therein that on or about between the 31st day of December, 1919, and the 6th day of January, 1920, California Wine Association, a corporation, delivered in good order and condition at San Francisco, California, 1108 barrels of brandy and 2992 barrels of wine for carriage by the steamer "West Aleta," as alleged therein, respondent is ignorant so that it can neither deny nor admit the same, wherefore it calls for strict proof, if relevant.

Said respondent denies that said 1108 barrels of brandy and 2992 barrels of wine, or any of them, were delivered in good order, and/or condition, aboard the Steamer "West Aleta," but [583] alleges that it was agreed, under the terms of the bill of lading, that said 1108 barrels of brandy and 2992 barrels of wine were shipped in apparent good order and condition on board the steamer "West Aleta," and not otherwise

Respondent denies that said 1108 barrels of brandy and 2992 barrels of wine were to be transported, and/or delivered, in like good order, and/or condition, as alleged in said article, but in this behalf admits that 1108 barrels of brandy and

2992 barrels of wine were to be carried upon the said steamer and delivered at the port of Rotterdam, Holland, in accordance with the terms and conditions of certain bills of lading issued for said shipment, and that, among other things, said bills of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in the said bills of lading at the port of Rotterdam, Holland

III.

Answering unto Article IV of the said second alleged cause of libel, respondent admits the issuance of its bills of lading on account of said shipments on the dates and for the quantities as alleged in the article, but in this behalf respondent refers to the said original bills of lading and demands that the libelant be required to produce said bills of lading upon the trial.

IV.

Answering unto the allegations of Article V of the said second alleged cause of libel, respondent admits the same.

V.

Answering unto Article VI of the said second alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the steamer "West Aleta" having on board the said 1108 barrels of brandy and 2992 barrels of wine sailed from the port of San Francisco, California, but denies that pursuant to respondent's [584] order, and/or directions, and/or otherwise, and/or

at all that said steamer "West Aleta," deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different voyage to the port of Hamburg, Germany, but in this behalf respondent alleges that by and under the terms and conditions of the bills of lading it was agreed, among other things, that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

VI.

Answering unto Article VII of the said second alleged cause of libel, respondent denies that the said 1108 barrels of brandy and 2992 barrels of wine were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but in this behalf respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in the said article, respondent alleges that it has no knowledge or information sufficient to enable it to answer the same, so that it can neither admit nor deny

said allegations, and therefore calls for strict proof thereof, if relevant.

VII.

Further answering unto the said second alleged cause of libel, and as further and separate defenses thereto, respondent [585] herein repeats and hereby makes a part of this answer as fully as if set forth at length herein all of the allegations of Articles VII, VIII, IX, X, XI, and XIII of the answer to the first alleged cause of libel herein.

VIII.

Further answering said alleged second cause of libel, respondent alleges that the said 1108 barrels of brandy and 2992 barrels of wine were insured, and respondent claims the benefit therof, and such deduction from any claim herein as is equal to the amount of any payment or loan made in respect of said shipment of brandy and wine by reason of any such insurance.

IX.

Further answering said alleged second cause of libel, and as a separate defense thereto, respondent alleges that it did not agree to carry said 1108 barrels of brandy and 2992 barrels of wine on any particular route, and/or to any port of call in any particular order and, in this behalf alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order in or out of the customary route."

WHEREFORE, respondent prays that said libel may be dismissed and for its costs herein.

IRA S. LILLICK,
Proctor for Respondent. [586]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, The District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such is authorized to make this verification; that he has read the foregoing answer to the libel herein and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California. [587]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANT TO RESPONDENT.

Answer to Interrogatory No. 1: Yes.
Answer to Interrogatory No. 2: Attached.
Answer to Interrogatory No. 3: No.
Answer to Interrogatory No. 4: None given.
Answer to Interrogatory No. 5: No.
Answer to Interrogatory No. 6: None.
Answer to Interrogatory No. 7: No.
Answer to Interrogatory No. 8: None.
Answer to Interrogatory No. 9: No.
Answer to Interrogatory No. 10: None.
Answer to Interrogatory No. 11: Balboa, Canal Zone.
Answer to Interrogatory No. 12: Hamburg, Germany.

IRA S. LILLICK,
Proctor for Respondent. [588]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such is authorized to make this verification; that he has read the foregoing answers

to interrogatories propounded by libelant to respondent herein and knows the contents thereof and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California. [589]

INTERROGATORIES DIRECTED TO LIBELANT TO BE ANSWERED BY IT UNDER OATH.

Interrogatory No. 1: Was any insurance carried upon the said 11,000 barrels of wine, and/or the said 1108 barrels of brandy, and/or the said 2992 barrels of wine, or any part thereof, herein?

Interrogatory No. 2: If so, attach copy of insurance policy.

Interrogatory No. 3: Has any insurance been paid on account of the loss, and/or damage, to the said 11,000 barrels of wine, and/or the said 1108 barrels of brandy, and/or the said 2992 barrels of wine, herein?

Interrogatory No. 4: If so, how much and to whom have said payments been made?

Interrogatory No. 5: Has any loan been made on account of the loss, and/or damage, to the said 11,000 barrels of wine, and/or the said 1108 barrels

of brandy, and/or the said 2992 barrels of wine, herein?

Interrogatory No. 6: If so, how much and to whom have the said loans been made?

IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Feb. 19, 1924. [590]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

ANSWERS TO INTERROGATORIES PROPOUNDED BY RESPONDENT TO LIBELANT.

Answer to interrogatory No. 1: Yes, insurance was carried upon said 11,000 barrels of wine and 1,108 barrels of brandy and 2,992 barrels of wine.

Answer to Interrogatory No. 2: Said insurance was covered by policy No. 641,422 issued by Fireman's Fund Insurance Company, and dated January 23, 1920. Said policy was in the usual form employed by said Insurance Company, and covered the usual risks. Libelant offers to permit respondent to inspect the said original policy at any time upon request.

Answer to Interrogatory No. 3: Yes.

Answer to Interrogatory No. 4: $642,871, paid to California Wine Association, libelant herein.

Answer to Interrogatory No. 5: No.

Answer to Interrogatory No. 6: None.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [591]

State of California,
City and County of San Francisco,—ss.

R. Sciaroni, being first duly sworn, deposes and says:

That he is an officer, to wit, the secretary, of California Wine Association, a corporation, libelant in the above-entitled cause, and makes this verification for and on behalf of the libelant for the reason that it is a corporation, as aforesaid; that he has read the foregoing answers to interrogatories propounded by respondent to libelant herein and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

R. SCIARONI.

Subscribed and sworn to before me this 5th day of June, 1924.

[Seal] JAMES ULARAN,
Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answers to Interrogatories

and receipt of a copy is hereby admitted this 11 day of June, 1924.

IRA S. LILLICK,
Proctor for Respondents.

[Endorsed]: Filed Jun. 17, 1924. [592]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that the following facts are true and that said facts shall be deemed proved at any trial or trials of said cause without the necessity of any evidence other than this stipulation, to wit:

(1) That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent eleven thousand (11,000) barrels of wine for carriage, by said steamer "West Aleta" as a common carrier of merchandise by sea, upon a voyage to Cardiff, Wales, and delivery there in like good order and condition unto the order of said libelant. That respondent duly re-received said eleven thousand (11,000) barrels of wine on board said steamer as such common carrier of merchandise by sea and agreed to carry the same by said steamer to Cardiff, Wales, and there to deliver said wine [593] as aforesaid.

(2) That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent, eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2992) barrels of wine, for carriage by said steamer "West Aleta," as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant; that respondent duly received said eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine on board said steamer as such common carrier of merchandise by sea, and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said brandy and wine, as aforesaid.

(3) That at the times herein mentioned the steamer "West Aleta" was owned by the United States of America and was documented in the name of the "United States represented by United States Shipping Board." Prior to the times mentioned in the libel the respondent entered into contracts with Messrs. Williams, Dimond & Company for the management and operation of said steamship, copies of which managing agreement and operating agreement are hereto annexed and marked, respectively, Exhibit "A" and Exhibit "B." During all the times mentioned in the libel said steamship was operated and managed under said agreements. [594]

(4) That the bills of lading issued with respect to the carriage of the wine described in paragraph (1) hereof were all in the form of Exhibit "C" attached hereto, except as to date, quantity, description of goods and freight charges, and this shall be deemed sufficient showing of all of said bills of lading as requested by respondent.

(5) That the bills of lading issued with respect to the carriage of the wine and brandy described in paragraph (2) hereof were all in the form of Exhibit "D" hereto attached, except as to date, quantity, description of goods and freight charges, and this shall be deemed sufficient showing of all of said bills of lading as requested by respondent.

(6) That the steamship "West Aleta" loaded and carried approximately two thousand six hundred thirty-four (2,634) tons of cargo destined for Cardiff, Wales, one thousand five hundred three (1,503) tons of cargo destined for Rotterdam, Holland and six hundred sixty-one (661) tons of general merchandise destined for Hamburg, Germany. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower holds and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent.

(7) That at all of the material times herein due diligence was exercised to make the steamship "West Aleta" in all respects seaworthy and properly manned, equipped and supplied.

(8) That from December 4, 1919, to January

sixth, 1920, inclusive, an advertisement, a copy of which is hereto [595] annexed, marked Exhibit "E," and hereby made a part hereof, appeared daily in the "Daily Commercial News of San Francisco," and on and between the same dates, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "F" and hereby made a part hereof, appeared daily in "The Guide," a leading commercial paper of San Francisco.

(9) That no greater value than that mentioned in Clause 2 and/or Clause 3 of the said bill of lading was stated by the shippers, nor was any bill of lading given and agreed therefor stating a greater value.

(10) That the steamship "West Aleta" sailed from San Francisco, California, on January sixth, 1920, having on board all the wine described in paragraph (1) hereof and all the wine and brandy described in paragraph (2) hereof. That in accordance with orders issued to the master, the vessel proceeded by the direct route from the Pacific Coast to the port of Hamburg via the Panama Canal. The course of the vessel and the circumstances of stranding are shown in a copy of the master's extended protest hereto attached, marked Exhibit "G" and hereby made a part hereof. That on the 12th day of February, 1920, at approximately two twenty-eight o'clock A. M., the said vessel stranded and was wrecked on Terschelling Island in the North Sea, and, with all her cargo, she became a total loss. All the wine described in paragraph (1) hereof and all the wine and brandy

described in paragraph (2) hereof, was totally destroyed as a result of the stranding and wreck of said steamship as aforesaid. [596]

(11) That the only ground upon which libelant asserts claim against respondent is upon the ground of improper deviation.

(12) If instead of proceeding toward Hamburg as her first port of call the steamer "West Aleta" had proceeded directly to the port of Cardiff as her first port of call, she would have arrived at Cardiff on or about the tenth day of February, 1920. The market value of the wine described in paragraph (1) hereof at Cardiff, Wales, on or about February tenth, 1920, was the sum of four hundred fifty-six thousand nine hundred fifty-five (456,955) dollars.

(13) If instead of proceeding toward Hamburg as her first port of call the steamer "West Aleta" had put into Cardiff as her first port of call, and there discharged cargo, and then proceeded to the port of Rotterdam, as her second port of call, she would have arrived at Rotterdam on or about the fifteenth day of February, 1920. The reasonable value of the wine and brandy described in paragraph (2) hereof at Rotterdam, Holland, on or about February fifteenth, 1920, was the sum of one hundred eighty-five thousand nine hundred sixteen (185,916) dollars.

(14) That no claims in writing with respect to the matters involved herein were made, nor was this libel filed within nine (9) months after re-

spondent received the goods described in paragraph (1) and (2) hereof.

(15) That in stipulating the facts herein the respective parties do not concede the relevancy or materiality of any fact so stipulated.

(16) That either party may offer evidence upon [597] matters deemed pertinent and not covered by this stipulation.

Dated: San Francisco, California, November 19th, 1924.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent. [598]

[Endorsed]: Filed Nov. 20, 1924. [603]

"EXHIBIT C"

4

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

Received in apparent good order and condition, from CALIFORNIA WINE ASSOCIATION

at SAN FRANCISCO, CAL. , master of steamer as mentioned below (weight, quality, contents and value unknown) to be transported by the ship "THOS AINSWORTH", now at or to arrive at the port of shipment, to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with liberty and with or without pilots, to tranship to any other vessels operated by said corporation, or said Board, or for the account, to lighter from vessel to vessel and from vessel to shore, to touch and stay at any port or ports, in any rotation or order in, or out of, the customary route and to sail at any part or parts more than once, unto the port of GARDIFF for one or more charters as the vessel may safely get, and there deliver in like apparent good order and condition, at the vessel's option, unto CHOSEN-MOFFETT, YOUNG & WISE LTD. CARDIFF, Wales or assigns, freight being paid as hereinafter set forth, they paying average unreleased (if any incurred).

Marks and Nos.	Packages	Contents	Gross Weight
I W CARDIFF #29601/31500	1900 Bols.	CAL. WINE (Serial No.29601/31500)	
		The vessel shall have liberty to deviate for the purpose of making trial trips and shall pay any reasonable increased cost of cargo insurance if any, incurred in consequence thereof.	

Freight Charges 730,208 Lbs. (Actual weight) GWT.

730,208 Lbs. at $2.10 per 100 Lbs. $15,384.40

Freight payable as per charter-party dated ... Freight to be considered fully earned and not to be repaid to shipper, even if there be a vessel lost or abandonment of the goods or any part thereof, and whether the ship or vessel performs the voyage or not, and whether the goods be lost or not during the voyage, or at the port of loading, a part of discharge, the port of delivery of any other port into which the ship may put or be found, whether even if the vessel or goods be lost, during the voyage or any stage of the same, whether other goods be substituted with the vessel, without negligence or with negligence in navigation or management of the vessel, and the general average, and all the provisions of any of the conditions herein mentioned this said vessel is to have the right to forward the above-mentioned cargo to the port of destination by any other steamer or steamers whether belonging to the Government of the United States or not, and whether under United States or foreign registry, whether employed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, and in case of damage during transhipment or transport during the voyage by a vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage thereon shall be paid for as fully as if such forwarding vessel or vessels belonged to private individuals or a private corporation.

If it reasonably appears that any ship may be lost or not reach the port of destination, or be seized or detained during the voyage by reason of blockade or any kind of hostile action, or by reason of infection, quarantine or the like, or that it may be unsafe or inadvisable to proceed to the port of destination, the master may discharge the goods at any port which he may deem safe and proper, or may return the goods to the port of shipment at the expense of the respective interests, and such action shall be deemed a due performance of this contract. Delivery or tender of delivery at any such port or place, or the return of the goods, shall be deemed completion of the voyage, and the freight shall be earned as if the goods had been delivered at the port of destination. The master may employ tugs and other vessels and use the ordinary methods to enter and leave any port or place of loading or discharge, and shall not be responsible for any damage that may be done to the goods or to any vessel, craft, lighter or raft, in consequence thereof.

It is mutually agreed that the owner shall not be liable for loss or damage occasioned by causes beyond the control, or by the perils of the sea or other waters, or by any defect in hull, machinery or appurtenances, by negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner or operator of the ship (not considered, however, as such while employed by the navigation

Kinsley Gardner 1000 bbls. Flour or Stronger Wheat Alpha" to Young & Wile, 100
CALIFORNIA WINE ASSOCIATION OF S. F., 100

ADDITIONAL STIPULATIONS AND AGREEMENTS OF THIS BILL OF LADING

IT IS ALSO MUTUALLY AGREED:

1. That the carrier shall not be liable for articles excepted in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof be given at the time of taking and entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and) for each fraction of one short ton lost or damaged or delayed an aliquant such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton; such short ton that is shipped being represented and agreed by the shipper as being of no greater value than One Hundred Dollars ($100.00) (unless a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or such shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed thereby stating such greater value.

3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, such package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed thereby stating such greater value.

4. Also, that the shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be landed short or torn, the consignee shall accept such proportion of the consignee as shall be allotted by the agents of the carrier, and the same shall be deemed a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, surf, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a notice being put into the post office addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the master or the carrier shall have the right under any and all circumstances, at his option, and without notice, to transship the goods at carrier's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods and if this in his judgment is impedient, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, on the authorities of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, & if hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignees by day and by night as fast as the vessel can deliver, consignees paying all loading charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the delivery of the goods. No claim arising under this Bill of Lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in part before opening the packages before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for nondelivery, after nine months from the voyage thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loss is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are shipped in receptacles of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper on to such consignee to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignee shall accept such proportion of the oil or other fluid which has leaked from its receptacles (and from any other receptacles on said vessel containing oil or other fluids) and can into the bilges, or elsewhere, as may be allotted by the carrier or his agents, and such allotment shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of conveying, of canvas in packages, of loading or unloading, or re-ding or receiving of goods, incurred by the carrier, shall be repaid to the carrier by the shipper, and the carrier shall have a lien for such charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligent, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Revised Statutes, 4281 to 4289, and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc." Provided that in all cases where merchandise or property is transported under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States or America against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipments shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as herein null and expunged, and all provisions herein shall be construed in connection with the provisions of said Act and be valid as far as consistent therewith.

16. Also, that as to all goods landed at Manila or at other Philippine ports, the cargo, in accordance with the regulations of the Philippine's customs service, is to be conveyed, by the ship's agents, at consignee's risk and expense, from the steamer to the Custom House wharf, and there delivered into the custody of the United States Custom House, for account of the consignee; and such delivery shall constitute a full discharge of the carrier's obligation, under this Bill of Lading, unless it be made to appear that exception was taken to the sufficiency of the delivery, by the customs authorities or employees when the goods were delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignees or their agents, in writing, to the ship's agents at Manila, within ten days after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, agents or master shall be liable therefor.

17. Also, that if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1896.

18. Also, that if the shipment hereunder is made at an Australian port, this Bill of Lading is to be used and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been struck out and eliminated therefrom prior to the execution thereof, and is hereby subject to all the terms and provisions of and to all the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean Ocean port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or on intermediate out forth or transship.

20. Also, that the carrier shall not be responsible on shipments of bundles, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, flaws or discolorations.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims in any way thereto arising hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail where in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this Bill of Lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

"EXHIBIT D"

Form 33, S. F.
11-10-6m22

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

14

Received in apparent good order and condition, from CALIFORNIA WINE ASSOCIATION
at SAN FRANCISCO, CAL., marked and numbered as below (weight, quality, contents and value unknown) to be transported by the ship "ERIC ALSTA", now at or to arrive at the port of shipment, to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with leave to sail with or without pilots, to tranship to any other vessels operated by said corporation, or said Board, or for its account, to lighter from vessel to vessel and from vessel to shore, to tranship either by rail, lighter or otherwise, to transfer to and from hulk, and to touch at any port or ports, in any rotation or order in, or out of, the customary route and to sail at any part or ports more than once, with the goods of ROTTERDAM (or as near thereto as the vessel may safely get), and there deliver in like apparent good order and condition, at the vessel's tackles, unto ORDER—NOTIFY YOUNG & WILE LTD. ROTTERDAM Holland or assigns, freight being paid as hereinafter set forth, they paying average accustomed (if any incurred).

Marks and Nos.	Packages	Contents	Gross Weight
W ROTTERDAM	650 Pkgs. BRANDY	The vessel shall have liberty to call at any port or ports for any purpose and engage in any trade, and render assistance, or deviate for the purpose of saving life or property, and to tranship the goods or any part thereof.	

Freight Charges 354,107 Lbs. (Actual weight)

354,107 Lbs. at $2.35 per 100# $8321.51

Rates, weight and/or measurement subject to correction.

Prepaid freight to be considered all earned and not to be repaid to shipper, even if there be a forced interruption or abandonment of the voyage at any port whatsoever, a port of distress, the port of delivery or any other port into which the ship may put or be taken, and/or even if the vessel or goods be lost, delayed or damaged as to part or whole of the entire transit, and/or after goods be unloaded from the vessel, without negligence in navigation or management of the vessel, and notwithstanding in Collision Damages and on the happening of any of the contingencies herein mentioned the said vessel is to have the right to forward the above-mentioned cargo to the port of destination, and there deliver upon compensation for such service, whether performed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, or those of strangers; and in case of salvage services rendered to aforesaid merchandise or treasure during the voyage by a vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage services shall be paid for as fully as if such salvaging vessels belonged to strangers.

It is mutually agreed that the ship shall have liberty to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the ordinary course of her voyage, or should the goods or any part of them be shut out from said vessel, that the carrier is authorized but not compelled to forward or tranship the goods to their destination by any other vessel, steam, motor or sail, at shipper's risk.

It is also mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond its control, or by the perils of the sea or other waters, by the acts, neglect or whosoever occurring, by barratry of the master or crew by mutinies, pirates or robbers, by pillage, by arrest and restraint of princes, rulers or people, riots, strikes or stoppages of labor, by explosion, or bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collision, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner or operator of the ship not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager, by unseaworthiness of the ship, even existing at the time of shipment or sailing on the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy, nor for or by heating, explosions of cargo, rats, spray, frost or any effect of climate, heat of hold, damp, putrefaction, decomposition, rumidity, rust, presence of foreign matter upon and/or in containers and/or upon and/or mingled with goods, injury to or soiling of wrappers or packages, chafing, sweat, change of character, smell, evaporation, or damage from any other goods, drainage, leakage, breakage, rats, vermin, or damage or deterioration caused by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages, or injury from hooks; nor for result of tearing or breaking or bursting of containers or packages; nor for hand damages whether on wharf or elsewhere; nor for the obliteration, error, insufficiency, or absence of marks, numbers, addresses or descriptions; nor for risk of craft, hulk or transhipment, including any transfer on lighters; nor for any loss or damage caused by the prolongation of the voyage; nor for damages of any kind to articles perishable in their nature; that the carrier shall not be considered as to the correctness of statements herein of quantity, quality, weight, contents and value; and that the ship or ships on which such goods are carried are not warranted seaworthy as to any defect or deficiency not discoverable by due diligence of the owners.

It is also mutually agreed that the General Average shall be settled at San Francisco according to York-Antwerp Rules of 1890, and as to matter not therein provided for according to the law and usage of the Port of San Francisco.

This contract is subject to all the stipulations and agreements herein set forth on either side hereof, whether stamped or printed, whether or not usual or customary, and whether or not in one or several paragraphs. All said paragraphs are to be construed together.

AND FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of a special contract, whether or not signed by the shipper.

IN WITNESS WHEREOF, the Master or Agent of the said ship has affirmed to THREE Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in San Francisco, Cal., this 5th day of January, 1920

WILLIAMS, DIMOND & CO., Agents,

SHIPPERS. By MASTER OR AGENTS.

STATE TOTAL PAID CAL. WINE ASS'N

SHIPPERS ARE REQUESTED TO CAREFULLY READ THIS BILL OF LADING, WHICH CONSTITUTES THE CONTRACT BETWEEN THE SHIPPER OR AGENT OF THE OWNER OF THE PROPERTY CARRIED AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION. B-720

Kindly deliver 600 bbls. wine ex steamer "West Alota" to Young and Wile, Inc.

California Wine Association, [signature] Treasurer

ADDITIONAL STIPULATIONS AND AGREEMENTS OF THIS BILL OF LADING

IT IS ALSO MUTUALLY AGREED:

1. That the carrier shall not be liable for articles excepted in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof be given at the time of being entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and for each fraction of one short ton lost or damaged or delayed an aliquot sum proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton), such short ton that is shipped being represented and agreed by the shipper as being of no greater value than One Hundred Dollars ($100.00) (under a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed thereafter stating such greater value.

3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper on the bill of lading given and agreed thereafter stating such greater value.

4. Also, that the shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be landed slack or torn, the consignees shall accept such proportion of the overplus as shall be allotted by the agents of the carrier, and the same shall be deemed a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, ice, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a letter being put into the post office addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and often held thereon for all extra expenses incurred in consequence; and the master or the carrier shall have the right under any and all circumstances, at his option, and without notice, to tranship the goods at carrier's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods; and if this in his judgment is inexpedient, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, as the authorities of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignees by day and by night as fast as the vessel can deliver, consignees paying all landing charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in no event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignee to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the package, within ten days from the delivery thereof, or if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loss is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are carried in receptacles of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper as to such such receptacle to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignees shall accept such proportion of the oil or other fluid which has leaked from its receptacles (and from any other receptacles on said vessel containing oil or other fluids) and run into the bilges, or elsewhere, as may be allotted by the carrier or his agents, and such allotment shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of cooperage, of repairs to packages, of bailing or rebailing, or sacking or resacking of goods, incurred by the carrier, shall be repaid to the carrier by the shipper, and the carrier shall have a lien for such charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Revised Statutes, 4281 to 4287, and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc." Provided that in all cases where merchandise or property is transported under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States or America against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipowners shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as struck out and expunged, and all provisions herein shall be construed in connection with the provisions of such Act and be valid so far as consistent therewith.

16. Also, that as to all goods landed at Manila or at other Philippine ports, the cargo, in accordance with the regulations of the Philippine's customs service, is to be conveyed, by the ship's agents, at consignee's risk and expense, from the steamer to the Custom House wharf, and there delivered into the custody of the United States Custom House, for account of the consignee; and such delivery shall constitute a full discharge of the carrier's obligation, under this Bill of Lading, unless it be made to appear that exception was taken to the sufficiency of the delivery, by the customs authorities or employees when the goods were delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignees or their agents, in writing, to the ship's agents at Manila, within ten days after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, agents or master shall be liable therefor.

17. Also, that, if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

18. Also, that if the shipment hereunder is made at an Australian port, this Bill of Lading is to be read and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been omitted and eliminated therefrom prior to the execution thereof, and is hereof subject to all the terms and provisions of and to all the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or as hereinbefore set forth to transhipp.

20. Also, that the carrier shall not be responsible on shipments of lumber, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, flaws or discolorations.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims of any lien thereon are hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail when in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this Bill of Lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

NOTICE TO PRODUCE.

To California Wine Association, Libelant Above Named, and To J. M. Mannon, Farnham P. Griffiths and McCutchen, Olney, Mannon & Greene, Its Proctors:

You and each of you are hereby notified to produce before the trial of the above-entitled matter the following documents, to wit:

1. Original loading tags or receipts given to shipper for all cargo shipped on the SS. "West Aleta," voyage 51, sailing from San Francisco January 6, 1920.

2. All letters to and from the shipper relative to securing option for space for cargo to be shipped on the SS. "West Aleta" and relative to booking cargo thereon.

3. Original notices or circular letters sent to shipper by Messrs. Williams, Dimond Co. relative to schedule for ports of call, and date of departure.

4. Applications for insurance on cargo shipped on the SS. "West Aleta," Voyage 51. [604]

5. Originals of all policies issued to shipper for cargo on the "West Aleta," Voyage 51.

6. All open policies and certificates issued thereon for cargo shipped on the SS. "West Aleta," Voyage 51.

7. Invoices showing premiums paid and certifi-

cates issued on cargo shipped on the "West Aleta," Voyage 51; and,

8. Original entry books covering open policies, in which entries relative to certificates issued thereunder were made.

IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Due service and receipt of a copy of the within notice is hereby admitted this 24th day of December, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE,

[Endorsed]: Filed December 29, 1924. [6041/2]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Monday the 29th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 29, 1924, —HEARING.

This cause came on regularly this day to be heard.

J. M. Mannon and F. P. Griffiths, Esqrs., ap-

pearing as proctors for libelant and Ira S. Lillick, Chalmer G. Graham and J. Arthur Olson, Esqrs., appearing as proctors for respondent. Mr. Mannon introduced in evidence and read the agreed statement of facts, which was marked Libelant's Exhibit No. 1.

In accordance with the oral stipulation of the proctors for the respective parties hereto, IT IS ORDERED that the evidence introduced in the suit of Rosenberg Bros. & Co. vs. U. S. Shipping Board Emergency Fleet Corporation, No. 17,692, may be considered as the evidence in this suit in so far as it pertains to the issues joined herein.

ORDERED that the further hearing hereof be continued until 10 o'clock A. M. to-morrow. [605]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 30th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 30, 1924 —HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued until ten o'clock A. M. to-morrow. [606]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 31, 1924 —HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing was resumed.

ORDERED that further hearing be continued to Friday, Jan. 2, 1925, at 10 A. M. [607]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Friday the 2d day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—JANUARY 2, 1925—HEARING (RESUMED).

The parties by their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued to Tuesday of Jan. 1925, at 10 A. M. [608]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 6th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—JANUARY 6, 1925—HEARING (RESUMED).

The parties and their attorneys being present as heretofore, the hearing was resumed.

ORDERED further hearing continued to 10 o'clock A. M. to-morrow. [609]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 7th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—JANUARY 7, 1925—ORDER SUBMITTING SUIT ON BRIEFS IN CASE No. 17,692.

The parties and the attorneys being present as heretofore, the hearing was resumed.

ORDERED that this suit be submitted on briefs to be filed in case No. 17,692. [610]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 23d day of September, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—SEPTEMBER 23, 1925—ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANT.

Pursuant to opinion filed, ordered that a decree be entered in favor of libelant. [611]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,693.

CALIFORNIA WINE ASSOCIATION (a Corporation),

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),

Respondent.

FINAL DECREE.

The above-entitled cause came on regularly for hearing December 29, 30 and 31, 1924, and January 2, 6 and 7, 1925, before Honorable Frank H. Kerrigan, United States District Judge. Libelant appeared by J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Man-

non & Greene, its proctors, and respondent appeared by Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., its proctors.

Evidence oral and documentary was introduced, briefs were filed and the cause was submitted to the Court for decision. The Court being fully advised in the premises filed its decision and opinion herein, holding and deciding that libelant should recover from respondent the sum of Six Hundred Forty-two Thousand Eight Hundred Seventy-one (642,871) Dollars, together with interest at the rate of seven (7) per cent per annum on Four Hundred Fifty-six Thousand [612] Nine Hundred and Fifty-five (456,955) Dollars thereof from February twelfth, one thousand nine hundred and twenty, and interest at the same rate on the remainder thereof, to wit, One Hundred Eighty-five Thousand Nine Hundred and Sixteen (185,916) Dollars, from February fifteenth, one thousand nine hundred and twenty, which said interest to the date hereof amounts to the sum of Two Hundred Fifty-two Thousand and Five Hundred Twelve and 62/100 (252,512.62) Dollars, and costs.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant above named, California Wine Association (a corporation), do have and recover from respondent, United States Shipping Board Emergency Fleet Corporation (a corporation), the sum of Eight Hundred Ninety-five Thousand and Three Hundred Eighty-three and 62/100 (895,383.62) Dollars, together

with interest thereon at the rate of seven (7) per cent per annum from the date of this decree until paid, together with the costs to be hereafter taxed.

Dated this 24th day of September, 1925.

FRANK H. KERRIGAN,
United States District Judge.

Approved as to form, and five (5) days' lodging with the Court waived.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

[Endorsed]: Filed Sep. 24, 1925.

Entered in Vol. 19, Judg. and Decrees, at page 295. [613]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,963.

MOTION TO MODIFY FINAL DECREE.

Now comes the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent in the above-entitled matter, appearing by its proctors, Ira S. Lillick and Chalmers G. Graham, and makes this its motion to modify, in the manner hereinafter set forth, the final decree in the above matter entered and filed the 24th day of September, 1925.

Said respondent moves that said decree, now providing for interest at the rate of 7% per an-

num, be modified and changed to provide for interest at the rate of 4% per annum.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

To California Wine Association and to J. M. Mannon, Jr., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors.

You and each of you will please take notice that the above-entitled motion will be called for hearing on Saturday, the 24th day of October, 1925, or as soon thereafter as proctors for the respondent may be heard, in the courtroom of the above-entitled [614] court, Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

Dated this 23d day of October, 1925.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Receipt of a copy of the within motion and notice is hereby admitted this 23 day of Oct., 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Oct. 23, 1925. [615]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—OCTOBER 26, 1925—ORDER DENYING MOTION TO MODIFY FINAL DECREE.

The motion to modify the decree herein, heretofore heard and submitted, being now fully considered, IT IS ORDERED that said motion be and same is hereby denied. [616]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

NOTICE OF APPEAL.

To the California Wine Association, a Corporation, Libelant in the Above-entitled Cause, and to J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division:

You, and each of you, will please take notice, that the United States Shipping Board Emergency Fleet Corporation, respondent in the above-entitled cause, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, in Admiralty, entered in said cause on the 24th day of September, 1925, ordering, adjudging and decreeing that libelant, California Wine Association, a corporation, recover the amount sued for by reason of the matters alleged in the libel in said cause with interest and costs and finding the amount due to said libelant to be the sum of $895,383.62, with costs, and interest thereon from the date of said decree.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Dated: San Francisco, California, the 9th day of November, 1925. [617]

Due service and receipt of a copy of the within notice of appeal is hereby admitted this 13th day of November, 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Nov. 13, 1925. [618]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

ASSIGNMENTS OF ERROR.

Comes now the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent and appellant in the above-entitled cause (hereinafter termed "Fleet Corporation") and assigns error in the conclusions, findings, proceedings and decree of the District Court, as follows:

I.

That the District Court erred in ordering and entering a decree in favor of the California Wine Association, a corporation, libelant and appellee above named against the Fleet Corporation, respondent and appellant above named, for the recovery from said respondent and appellant of the principal sum of $642,871.00, together with interest thereon at the rate of 7% per annum from the 12th day of February, 1920, to the 24th day of September, 1925, in the further sum of $252,-512.62, together with interest and costs thereon.

II.

That the District Court erred in not dismissing [619] the libel of the California Wine Association against the Fleet Corporation.

III.

That the District Court erred in holding that the law has attached a fixed and certain meaning to the following liberty to call clause:

"Received in apparent good order and condition * * * at San Francisco * * * to be transported by the ship 'West Aleta' * * * *with leave* * * * *to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port of* Cardiff (Rotterdam) * * *."

IV.

That the District Court erred in holding that under such a clause the vessel did not have the liberty to proceed beyond the port of discharge named in the bill of lading and that the vessel under such a clause is limited in the application of the clause "to ports substantially on the course of the voyage described between its termini and before the port of destination."

V.

That the District Court erred in finding that the principal reason that the "West Aleta" took the course she followed on her voyage was convenience of the vessel in loading return cargo.

VI.

That the District Court erred in holding that the only distinction between the facts in the above-entitled cause and that of Smith vs. U. S. S. B. E. F. C. (2 Fed. (2d) 390) is that in the present case the greater part of the cargo was destined for Cardiff whereas in that case all of the cargo was shipped to Rotterdam. [620]

VII.

That the District Court erred in holding that the

phrase in the bill of lading before the court in this case "out of the customary route" was redundant and without meaning.

VIII.

That the District Court erred in holding that the phrase in the bill of lading before the Court in this case "out of the customary route" did not extend the liberties otherwise given in the said bill of lading.

IX.

That the District Court erred in holding that the liberties clause herein relied upon must be construed with reference to a particular voyage named in a particular bill of lading which covers only a part of the cargo between the ports of departure and the ports of destination named in the said bill lading.

X.

That the District Court erred in holding that the voyage described in the said bill of lading was a specific one and covered the shortest geographical distance between the ports of departure and the ports of destination named therein.

XI.

That the District Court erred in holding that the liberties clause herein relied upon had no application to any port or ports not naturally and usually ports of call on the voyage.

XII.

That the District Court erred in holding that in proceeding on the voyage on which the "West Aleta" was at the time of her loss the vessel was

initiating a new voyage before an old voyage was completed. [621]

XIII.

That the District Court erred in holding that the only question present was one of fact, namely: whether Hamburg is a port on the course of a voyage from San Francisco to Cardiff or Rotterdam.

XIV.

That the District Court erred in holding that the custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XV.

That the District Court erred in holding that evidence of the custom was inadmissible, and in excluding the same from consideration.

XVI.

That the District Court erred in holding that the liberties clause is plain and unambiguous, and in holding that the words "out of the customary route" are plain and unambiguous.

XVII.

That the District Court erred in holding that knowledge of the libelant that the "West Aleta" was to proceed to Hamburg before Rotterdam and Cardiff was unimportant.

XVIII.

That the District Court erred in holding that facts and circumstances extraneous to the bill of lading must be disregarded.

XIX.

That the District Court erred in holding that all evidence tending to indicate that the libelant knew or ought to have known of the course which was intended to be taken by the "West Aleta" must be excluded. [622]

XX.

That the District Court erred in holding that evidence tending to prove knowledge on the part of a shipper that a particular ship will deviate from a route is inadmissible and in excluding the same from consideration.

XXI.

That the District Court erred in holding that the "West Aleta" deviated in proceeding to Hamburg before she had discharged her Cardiff and Rotterdam cargo.

XXII.

That the District Court erred in holding that the "West Aleta" in so proceeding to Hamburg before discharging her Cardiff and Rotterdam cargo, under the circumstances of this case made the respondent and appellant an insurer of the said cargo.

XXIII.

That the District Court erred in holding that the Fleet Corporation was not entitled to the benefit of the insurance paid to the California Wine Association.

XXIV.

That the District Court erred in holding that the custom for vessels in the service in which the

"West Aleta" was engaged to call at ports of discharge in any order was not established.

XXV.

That the District Court erred in holding that a deviation avoids the contract of carriage.

XXVI.

That the District Court erred in holding that it was not a condition precedent to suit for loss against a carrier for deviation that the cargo owner had been deprived of its right against its insurer. [623]

XXVII.

That the District Court erred in not holding that the Fleet Corporation was only suable in admiralty under the provisions of the "Suits in Admiralty Act of 1920."

XXVIII.

That the District Court erred in not holding that the suit of the California Wine Association was barred under the provisions of Section 5 of the Suits in Admiralty Act of 1920.

XXIX.

That the District Court erred in not holding that the suit of the California Wine Association was barred by laches.

XXX.

That the District Court erred in holding that the "West Aleta" was a vessel operated by the Fleet Corporation.

XXXI.

That the District Court erred in awarding the libelant California Wine Association interest at the rate of 7% per annum.

XXXII.

That the District Court erred after holding that the libelant was entitled to interest, in not awarding the libelant interest at the rate of 4% per annum as provided in Section 3 of the Suits in Admiralty Act of 1920.

XXXIII.

That the District Court erred in not holding that the burden was on the libelant of proving what was the "customary route."

XXXIV.

That the District Court erred in not holding that the burden was on the libelant of proving that the "West Aleta" [624] departed from the "customary route," and in so doing exceeded the privileges given in the liberties clause when she proceeded toward Hamburg as her first port of call.

XXXV.

That the District Court erred in not holding that the libelant herein had failed to prove that the "West Aleta" departed from the customary route.

XXXVI.

That the District Court erred in not holding that under the terms and provisions of Section 3 of the Harter Act the Fleet Corporation was not an insurer.

XXXVII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered

by the libelant for the reason that said damage or loss resulted from faults or errors in navigation or in the management of said vessel.

XXXVIII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted and arose from dangers of the sea and/or other navigable waters and/or acts of God.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant. [625]

Due service and receipt of a copy of the within assignment of errors is hereby admitted this 23d day of December, 1925.

J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
EDWARD J. McCUTCHEN.

[Endorsed]: Filed Dec. 23, 1925. [626]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

STIPULATION EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1925, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between

the parties in the above-entitled cause that the time for filing of the same assignment of errors and apostles on appeal may be, and the same hereby is extended to and including the 15th day of December, 1925.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr., and
FARNHAM P. GRIFFITHS,
IRA S. LILLICK.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1925. [627]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 4, 1926, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same hereby is, extended to and including the 4th day of January, 1926.

McCUTCHEN, OLNEY, MANNON & GREENE.

IRA S. LILLICK.

It is so ordered.

_____.

United States District Judge.

[Endorsed]: Filed Dec. 23, 1925. [628]

In the Southern Division of the United States District Court, Northern District of California, Third Division.

No. 18,046.

S. L. JONES & COMPANY, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

STATEMENT OF CLERK U. S. DISTRICT COURT.

PARTIES.

Libelant: S. L. Jones & Company, a Corporation.
Respondent: United States Shipping Board Emergency Fleet Corporation, a Corporation.

PROCTORS.

For Libelant: J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., & McCutchen, Olney, Mannon & Greene.

PROCEEDINGS.

1923.

Nov. 19. Filed libel, with interrogatories attached. Issuing citation, which was *return* executed.

Dec. 18. Filed exceptions to libel.

1924.

Feb. 4. Ordered exceptions to libel overruled.

[629]

Feb. 19. Filed answer to libel with interrogatories propounded to libelant. Also, answers to interrogatories propounded to respondent.

Jun. 17. Filed answers to interrogatories propounded to libelant.

Nov. 20. Filed agreed statement of facts.

Dec. 29. Hearing of issues (Hon. Frank H. Kerrigan, Judge). Hearing resumed on Dec. 30, 31, 1924, Jan. 2, 6, 1925, and submitted on January 7th, 1925.

1925.

Jan. 7. Filed deposition of W. M. Strong.

Jul. 27. Filed stipulation as to amount of recovery.

Sept. 23. Filed opinion. Ordered that a decree be entered in favor of libelant.

24. Filed final decree.

Oct. 23. Filed motion to modify final decree.

26. Ordered motion to modify final decree be denied.

Nov. 13. Filed notice of appeal.

Filed bond for costs on appeal.

Dec. 14. Ordered motion to stay execution submitted.

23. Filed assignment of errors.

Filed praecipe for apostles on appeal.

[630]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,046.

S. L. JONES & COMPANY, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

LIBEL IN PERSONAM.

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court, for the Northern District of California:

The libel of S. L. Jones & Company, a corporation, against United States Shipping Board Emergency Fleet Corporation, a corporation, in a cause of contract and deviation, civil and maritime, respectfully shows:

I.

That libelant is and at all times herein mentioned was a corporation duly organized and existing

under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business [631] in said state at 369 Pine Street in the City and County of San Francisco.

That at all times herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel; that at all times herein mentioned the steamer "Cockaponset" was an American steamer operated by said respondent solely as a merchant vessel.

III.

That libelant heretofore and, to wit, on or about the twentieth day of November, 1919, delivered in good order and condition at San Francisco, California, to respondent one hundred fourteen (114) cases of nutmegs for carriage by said steamer "Cockaponset" as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant; that respondent duly received said one hundred fourteen (114) cases of nutmegs and agreed to carry the same

by said steamer to Rotterdam, Holland, and there to deliver said nutmegs as aforesaid.

IV.

That respondent duly issued its bills of lading on account of said shipment of one hundred fourteen (114) cases of nutmegs on the twentieth day of November, 1919.

V.

That the full amount of freight charged and due for said shipment was the sum of five hundred and twenty (520) dollars, which sum libelant prepaid.

VI.

That respondent wrongfully neglected to ship eighty-two (82) of said one hundred fourteen (114) cases of nutmegs by [632] the said steamer "Cockaponset" and said vessel sailed from San Francisco without having on board said eighty-two (82) cases of nutmegs; that thereafter respondent placed said eighty-two (82) cases of nutmegs aboard the said steamer "West Aleta" for shipment to said port of Rotterdam, Holland.

VII.

That thereafter respondent duly issued its bill of lading on account of said shipment of eighty-two (82) cases of nutmegs by said steamer "West Aleta" on the sixth day of January, 1920.

VIII.

That the full amount of freight charged and due for said shipment of said eighty-two (82) cases of nutmegs by said steamer "West Aleta" was the sum of three hundred and seventy-nine and

25/100 (379.25) dollars, which sum libelant prepaid.

IX.

That on or about the sixth day of January, 1920, said steamer "West Aleta," having on board said eighty-two (82) cases of nutmegs, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage from San Francisco to said port of Rotterdam, Holland, said vessel, with the knowledge and privity of respondent and pursuant to respondent's orders and instructions, deviated from said voyage and proceeded on an entirely different voyage to the port of Hamburg, Germany; that during the course of said deviation and after the said "West Aleta" had passed far beyond the said port of Rotterdam, Holland, without entering said port, she stranded on Terschelling Island (in the North Sea) and became a total loss.

X.

That by reason of said deviation, stranding and loss of [633] the said steamer "West Aleta," the said eighty-two (82) cases of nutmegs were totally lost, all to the damage of said libelant in the sum of four thousand, eight hundred and forty-one and 66/100 (4,841.66) dollars.

WHEREFORE, libelant prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction and in accordance with acts of Congress in such cases made and provided, may issue to and against the said respond-

ent, the United States Shipping Board Emergency Fleet Corporation, citing and admonishing it to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to pronounce for and award to libelant its damages aforesaid, with interest and costs, and will enter a decree for said damages, interest and costs in favor of libelant and against respondent, and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [634]

State of California,
City and County of San Francisco,—ss.

P. C. Denroche, being first duly sworn, deposes and says:

That he is an officer, to wit, the President, of S. L. Jones & Company, a corporation, libelant in the above-entitled cause; that said S. L. Jones & Company is a corporation duly organized and existing under and by virtue of the laws of the State of California; that affiant makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are docu-

ments, correspondence and papers coming to his attention as such officer of said corporation.

P. C. DENROCHE.

Subscribed and sworn to before me this 17th day of November, 1923.

[Notarial Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California. [635]

INTERROGATORIES ADDRESSED TO RESPONDENT TO BE ANSWERED BY IT UNDER OATH.

First Interrogatory.

Did respondent, or its agents, give the steamer "West Aleta," or its officers, any sailing orders prior to its departure from San Francisco, California, on or about the sixth day of January, 1920?

Second Interrogatory.

If the answer to the foregoing first interrogatory shall be in the affirmative, attach a true and correct copy of said sailing orders to the answer to these interrogatories.

Third Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, instructions or directions in writing, other than said sailing orders, respecting the ports of call of said vessel upon the

voyage about to be commenced, or respecting the order of calling thereat?

Fourth Interrogatory.

If the answer to the foregoing third interrogatory shall be in the affirmative, attach true and correct copies of all said orders, instructions and directions to the answer to these interrogatories.

Fifth Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said [636] vessel, or its officers, any orders, instructions, or directions, in any other way than in writing, respecting the ports of call of said vessel upon the voyage about to be commenced, or respecting the order of calling thereat?

Sixth Interrogatory.

If the answer to the foregoing fifth interrogatory shall be in the affirmative, state fully what all said orders, instructions and directions were.

Seventh Interrogatory.

After the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage or the order of calling at said ports?

Eighth Interrogatory.

If the answer to the foregoing seventh interrogatory shall be in the affirmative, attach true and

correct copies of said orders, instructions and directions to the answer to these interrogatories.

Ninth Interrogatory.

After the departure of said vessel from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in any other way than in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage, or the order of calling at said ports?

Tenth Interrogatory.

If respondent's answer to the foregoing Ninth Interrogatory shall be in the affirmative, state fully what said orders, [637] instructions and directions were and how given.

Eleventh Interrogatory.

What was the first port of call of said steamer "West Aleta" on the voyage from San Francisco, California, leaving on or about the sixth day of January, 1920?

Twelfth Interrogatory.

To what first port of call was said Steamer "West Aleta" bound at the time of her stranding in or about the month of February, 1920?

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE.

[Endorsed]: Filed Nov. 19, 1923. [638]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

EXCEPTIONS TO LIBEL.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California.

The respondent, the United States Shipping Board Emergency Fleet Corporation, appearing by its proctor, Ira S. Lillick, excepts to the libel herein, as follows:

I.

That said libel fails to state facts sufficient to constitute a cause of libel against the respondent.

II.

That said libel fails to state facts sufficient to confer jurisdiction upon this court and that said court is without jurisdiction over the matters contained therein.

III.

That said libel fails to allege that the steamer "Cockaponset" was employed and/or operated as a merchant vessel at the time of the filing of the libel, or at the commencement of the alleged cause of libel therein contained. [639]

IV.

That it does not appear from the libel that at the time of the filing thereof the steamer "Cockaponset" was within the Northern District of California, or within the jurisdiction of this court.

V.

That it does not appear from the libel that at the time of the filing thereof the steamer "Cockaponset" was within the territorial limits of the United States or its possessions, or within the jurisdiction of this court.

VI.

That the libel fails to allege that the steamer "West Aleta" was employed and/or operated as a merchant vessel at the time of the filing of the libel, or at the commencement of the alleged cause of libel therein contained.

VII.

That it appears from the libel that at the time of filing thereof the steamer "West Aleta" was not within the Northern District of California, or within the jurisdiction of this court.

VIII.

That it appears from the libel that at the time of filing thereof the steamer "West Aleta" was not within the territorial limits of the United States, or of its possessions, or within the jurisdiction of this court.

IX.

That at the time of the filing of the libel herein, more than one year had elapsed since the coming into effect of that certain Act of Congress known as Suits in Admiralty Act, March 9, 1920, and particularly Section 5 thereof, and that by [640] and under the provisions of said Act, the alleged cause of libel set forth in said libel is barred.

X.

That the libel is insufficient in that:

a. It cannot be ascertained therefrom upon what route respondent agreed to carry and/or transport the merchandise specified therein to Rotterdam, Holland on the steamer "Cockaponset."

b. That it cannot be ascertained therefrom whether the 114 cases of nutmegs and/or the 82 cases of nutmegs mentioned therein were carried and/or transported under the bills of lading alleged to have been issued by the respondent on November 20, 1919, or under the bills of lading alleged to have been issued by the respondent on January 6, 1920.

c. That it cannot be ascertained therefrom, and particularly from Article IX thereof, what is meant by "the agreed voyage from San Francisco to said port of Rotterdam, Holland."

d. That it cannot be ascertained therefrom, and particularly from Article VI thereof, how or in what manner the respondent is alleged to have wrongfully neglected to ship 82 cases out of the 114 cases of nutmegs by the steamer "Cockaponset."

e. That it cannot be ascertained therefrom upon what route respondent agreed to carry and/or transport the 82 cases of nutmegs from San Francisco to Rotterdam, Holland, on the steamer "West Aleta."

f. That it cannot be ascertained therefrom whether or not the Port of Hamburg was a port of call at which the steamer "Cock-

aponset" was privileged to call on the voyage, provided for in the bill of lading.

g. That it cannot be ascertained therefrom whether or not the Port of Hamburg was a port of call at which the steamer "West Aleta" was privileged to call on the voyage provided for in the bill of lading. [641]

WHEREFORE, respondent prays that the libel herein be dismissed and that respondent have its costs of suit herein.

IRA S. LILLICK,
Proctor for Respondent.

Due service and receipt of a copy of the within exceptions to libel is hereby admitted this 17 day of Dec. 1923.

FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Dec. 18, 1923. [642]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the fourth day of February, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable JOHN S. PARTRIDGE, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—FEBRUARY 4, 1924—ORDER OVERRULING EXCEPTIONS TO LIBEL.

Ordered that respondent's exceptions to libel be overruled, with 15 days to answer. [643]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ANSWER.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

The answer of United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, in a cause of contract, civil and maritime, admits, denies and alleges as follows:

I.

Answering unto Articles I and II of the said alleged cause of libel, respondent admits the allegations contained therein.

II.

Answering unto Article III of the said alleged cause of libel, and particularly unto the allegation therein that on or about the 20th day of November,

1919, S. L. Jones & Company, a corporation, libelant herein, delivered in good order and condition at San Francisco, California, 114 cases of nutmegs for carriage by the steamer "Cockaponset," as alleged therein, respondent [644] is ignorant, so that it can neither deny nor admit the same, wherefore it calls for strict proof thereof, if relevant.

Said respondent denies that the said 114 cases of nutmegs, or any of them, were delivered in good order, and/or condition aboard the steamer "Cockaponset," but alleges that it was agreed under the terms of the bill of lading that the said 114 cases of nutmegs were shipped in apparent good order and condition on board the steamer "Cockaponset," and not otherwise.

Respondent denies that the said 114 cases of nutmegs were to be transported, and/or delivered, in like good order and/or condition, as alleged in said article, but in this behalf admits that said 114 cases of nutmegs were to be carried upon the said steamer and delivered at the port of Rotterdam, Holland, in accordance with the terms and conditions of certain bills of lading issued for said shipment, and that, among other things, said bills of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in said bill of lading at the port of Rotterdam, Holland, and further said bill of lading provided that the said 114 cases of nutmegs were to be transported by the steamer "Cockaponset" "to be carried upon said vessel, or any other vessel operated by, or on

account of, the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board."

III.

Answering unto Article IV of the said alleged cause of libel, respondent admits the issuance of its bills of lading on account of the said shipments on the dates and for the quantities alleged in said article, but in this behalf respondent refers to the said original bills of lading, and demands that the libelant be required to produce said bills of lading upon the trial. [645]

IV.

Answering unto the allegations of Article V of said alleged cause of libel, respondent admits the same.

V.

Answering unto Article VI of the said alleged cause of libel, respondent denies that it neglected, and/or wrongfully neglected, to ship 82 of the said 114 cases of nutmegs by the steamer "Cockaponset," but in this behalf admits that 82 cases of nutmegs were shipped upon the steamer "West Aleta" in accordance with the terms and conditions of certain bills of lading issued for the said shipment, and that, among other things, said bills of lading provided that the said cases of nutmegs were to be transported by the steamer "Cockaponset" "to be carried upon the said steamer, or any other steamer operated by, or on account of, the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board."

Respondent admits that the said steamer "Cockaponset" sailed from the port of San Francisco without having on board 82 cases of the said 114 cases of nutmegs.

Respondent admits that thereafter it placed the 82 cases of nutmegs aboard the steamer "West Aleta" for shipment to the said port of Rotterdam, Holland, which said steamer "West Aleta" was then and there being operated by, or on account of, the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board.

VI.

Answering unto Article VII of the said alleged cause of libel, respondent admits the issuance of its bill of lading on account of the said shipment on the date and for the quantities alleged in said article, but in this behalf respondent refers to [646] the said original bills of lading, and demands that the libelant be required to produce said bills of lading upon the trial.

VII.

Answering unto the allegations of Article VIII of the said alleged cause of libel, respondent admits the same.

VIII.

Answering unto Article IX of the said alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the said steamer "West Aleta," having on board the said 82 cases of nutmegs, sailed from the Port of San Francisco, California, but denies that pursuant to

respondent's order and/or directions and/or otherwise, and/or at all, that the said steamer "West Aleta" deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different route to the port of Hamburg, Germany, but in this behalf respondent alleges that by and under the terms and conditions of the bills of lading it was agreed, among other things, that the carrier is to have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

IX.

Answering unto Article X of the said alleged cause of libel, respondent denies that the said 82 cases of nutmegs were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but in this behalf respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty [647] "to touch at at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in said article, respondent alleges that it has no knowledge or information sufficient to enable it to answer the

same, so that it can neither admit nor deny said allegations, and calls for a strict proof thereof, if relevant.

X.

Further answering said libel, respondent alleges that at all of the times in the libel mentioned, prior to said stranding, due diligence has been exercised to make said steamer "West Aleta, in all respects seaworthy and properly manned, equipped and supplied, and said steamer was at all of said times in fact in all respects seaworthy and properly manned, equipped and supplied.

XI.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent alleges that, among other things, in and by the terms of said bills of lading, it was mutually agreed that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once," and in this behalf respondent alleges that at the time of the said stranding of the said steamer "West Aleta" upon Terschelling Island, the said steamer was en route to the port of Hamburg, Germany, as a regular port of call under and by virtue of the terms of the bill of lading herein, and as a further and separate defense, said bill of lading further provides, in part, as follows:

"Clause 2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in [648] pack-

ages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100) as the weight of such fraction bears to one short ton) each short ton that is shipped being represented and agreed by the shippers as being of no greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting *from faults or errors in navigation,* or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common [649] peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness."

"Clause 10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this bill of lading, the total amount recoverable shall in any event be re-

stricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this bill of lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or *if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery.* No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or *if said claim is for nondelivery, after nine months from the receipt thereof, by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.*"

"Clause 11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any *insurance* that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder

the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods."

"Clause 14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely [650] due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise."

XII.

Further answering unto said libel, and as a separate defense thereto, respondent alleges that any damage to, or loss of, cargo was caused by one or more, and/or a combination of two or more of the risks, and/or perils, excepted in said bill of lading, and/or by the provisions of the Act of Congress of the United States, approved February 13, 1893, commonly known as the Harter Act.

XIII.

Further answering said cause of libel, respondent alleges that no value greater than $100.00 for each short ton, or a fraction thereof, was stated by the shipper, nor was there any agreement stating any greater value.

XIV.

Further answering said cause of libel, and as a separate defense thereto, respondent alleges that no claim was presented in writing within the time limited in Clause 10 of the bill of lading, nor was any suit commenced under the bill of lading, or in respect of said shipment of goods, within the time limited in Clause 10 of the bill of lading, under which said goods were shipped and that, by reason thereof, any claims under said bill of lading, or in respect of said goods, were waived, and became barred, and the carrier was discharged therefrom.

XV.

Further answering said alleged cause of libel, respondent alleges that said 82 cases of nutmegs were insured, and respondent claims the benefit thereof, and claims a deduction from any claim herein to the amount of any payment or loan made in respect of said shipment of nutmegs. [651]

XVI.

Further answering unto said alleged cause of libel, respondent hereby refers to the bills of lading under which said goods were shipped, and prays that the libelant be compelled to produce the same at trial, and refers to each and all of the terms and conditions of said bills of lading, as though said bills of lading were attached hereto, and made a part hereof.

XVII.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent al-

leges that it did not agree to carry said 82 cases of nutmegs on any particular route, and/or to any port of call in any particular order and, in this behalf alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order in or out of the customary route."

WHEREFORE, respondent prays that said libel may be dismissed and for its costs herein.

IRA S. LILLICK,
Proctor for Respondent. [652]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director, of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such, is authorized to make this verification; that he has read the foregoing answer to the libel herein and knows the contents thereof and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California. [653]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANT TO RESPONDENT.

Answer to Interrogatory No. 1: Yes.
Answer to Interrogatory No. 2: Attached.
Answer to Interrogatory No. 3: No.
Answer to Interrogatory No. 4: None given.
Answer to Interrogatory No. 5: No.
Answer to Interrogatory No. 6: None.
Answer to Interrogatory No. 7: No.
Answer to Interrogatory No. 8: None.
Answer to Interrogatory No. 9: No.
Answer to Interrogatory No. 10: None.
Answer to Interrogatory No. 11: Balboa, Canal Zone.
Answer to Interrogatory No. 12: Hamburg, Germany.

IRA S. LILLICK,
Proctor for Respondent. [654]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such is authorized to make this verification; that he has read the foregoing answers to

interrogatories propounded by libelant to respondent herein and knows the contents thereof and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisca, State of California. [655]

INTERROGATORIES DIRECTED TO LIBELANT, TO BE ANSWERED BY IT UNDER OATH.

Interrogatory No. 1: Was any insurance carried upon the said 82 cases of nutmegs, or any part thereof, herein?

Interrogatory No. 2: If so, attach copy of insurance policy.

Interrogatory No. 3: Has any insurance been paid on account of the loss, and/or damage, to the said 82 cases of nutmegs, herein?

Interrogatory No. 4: If so, how much and to whom have said payments been made?

Interrogatory No. 5: Has any loan been made on account of the loss, and/or damage, to the said 82 cases of nutmegs, herein?

Interrogatory No. 6: If so, how much and to whom have the said loans been made?

IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Feb. 19, 1924. [656]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ANSWERS TO INTERROGATORIES PROPOUNDED BY RESPONDENT TO LIBELANT.

Answer to Interrogatory No. 1: Yes, insurance was carried upon 82 cases of nutmegs.

Answer to Interrogatory No. 2: Said insurance was covered by Certificates Nos. 11152, 11153, 11154, 11416, dated, respectively, November 26, 1919, November 26, 1919, and January 8, 1920, all issued by The Switzerland Marine Insurance Company, Ltd. Said certificates were in the usual form employed by said Insurance Company, and covered the usual risk. Libelant offers to permit respondent to inspect the said original certificates at any time upon request.

Answer to Interrogatory No. 3: Yes.

Answer to Interrogatory No. 4: $4,841.66, paid to Messrs. R. Mees & Zoonen.

Answer to Interrogatory No. 5: No.

Answer to Interrogatory No. 6: None.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [657]

State of California,
City and County of San Francisco,—ss.

P. C. Denroche, being first duly sworn, deposes and says:

That he is an officer, to wit, the president of S. L. Jones & Company, a corporation, libelant in the above-entitled cause, and makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing answers to interrogatories propounded by respondent to libelant herein and knows the contents thereof, and that the same are true of his own knowledge except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

P. C. DENROCHE.

Subscribed and sworn to before me this 9th day of June, 1924.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answer to Interrogatories

and receipt of a copy is hereby admitted this 16 day of June, 1924.

I. S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Jun. 17, 1924. [658]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that the following facts are true and that said facts shall be deemed proved at any trial or trials of said cause without the necessity of any evidence other than this stipulation, to wit:

(1) That libelant heretofore, and, to wit, on or about the twentieth day of November, 1919, delivered in good order and condition at San Francisco, California, to respondent one hundred fourteen (114) cases of nutmegs for carriage by the steamer "Cockaponset" as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant; that respondent duly received said one hundred fourteen (114) cases of nutmegs and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said nutmegs as aforesaid.

(2) That respondent failed to carry eighty-two (82) of said one hundred and fourteen (114) cases

of nutmegs by said steamer "Cockaponset" and said vessel sailed from San Francisco without [659] having on board said eighty-two (82) cases of nutmegs; that thereafter respondent placed said eighty-two (82) cases of nutmegs aboard the steamer "West Aleta" for shipment to said port of Rotterdam, Holland.

(3) That on the 20th day of November, 1919, respondent issued its bill of lading on account of the shipment of said one hundred fourteen (114) cases of nutmegs by the said steamer "Cockaponset." That thereafter and after eighty-two (82) cases of said one hundred fourteen (114) cases of nutmegs had been placed aboard said steamer "West Aleta" to wit, on the 6th day of January, 1920, respondent issued its bill of lading on account of said shipment of eighty-two (82) cases of nutmegs by said steamer "West Aleta." A true and correct copy of said bill of lading is attached hereto and marked Exhibit "C." The bill of lading issued on November 20, 1919, as aforesaid, was in the form of said Exhibit "C" except as to date, quantity, description of goods, freight charges and name of vessel. This shall be deemed sufficient showing of both of said bills of lading as requested by said respondent.

(4) That the steamship "West Aleta" loaded and carried approximately two thousand six hundred thirty-four (2634) tons of cargo destined for Cardiff, Wales, one thousand five hundred and three (1503) tons of cargo destined for Rotterdam, Holland, and six hundred and sixty-one (661) tons

of general merchandise destined for Hamburg, Germany. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower holds and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent.

(5) That at all of the material times herein due diligence was exercised to make the steamship "West Aleta" in all respects seaworthy and properly manned, equipped and supplied.

(6) That from December 4, 1919, to January 6, 1920, [660] inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "D," and hereby made a part hereof, appeared daily in the "Daily Commercial News of San Francisco," and on and between the same dates, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "E" and hereby made a part hereof, appeared daily in "The Guide," a leading commercial paper of San Francisco.

(7) That no greater value than that mentioned in Clause 2 and/or Clause 3 of the said bill of lading was stated by the shippers, nor was any bill of lading given and agreed therefor stating a greater value.

(8) That the steamship "West Aleta" sailed from San Francisco, California, on January 6, 1920, having on board all the cases of nutmegs described in paragraph (2) hereof. That in accordance with orders issued to the master, the vessel proceeded by the direct route from the Pacific Coast to the port

of Hamburg via the Panama Canal. The course of the vessel and the circumstances of stranding are shown in a copy of the master's extended protest hereto attached, marked Exhibit "F" and hereby made a part hereof. That on the 12th day of February, 1920, at approximately two-twenty-eight o'clock A. M., the said vessel stranded and was wrecked on Terschelling Island in the North Sea, and, with all her cargo, she became a total loss. All the cases of nutmegs described in paragraph (2) hereof were totally destroyed as a result of the stranding and wreck of said steamship as aforesaid.

(9) That the only ground upon which libelant asserts claim against respondent is upon the ground of improper deviation.

(10) If, instead of proceeding toward Hamburg as her first port of call, the steamer "West Aleta" had put into Rotterdam as [661] her first port of call, she would have arrived at Rotterdam on or about the 11th day of February, 1920. If, instead of proceeding toward Hamburg as her first port of call, the steamer "West Aleta" had put into Cardiff, Wales, as her first port of call and there discharged cargo and then proceeded to the port of Rotterdam as her second port of call, she would have arrived at Rotterdam on or about the 15th day of February, 1920. The market value of the goods described in paragraph (2) hereof at Rotterdam, Holland, on or about the 11th day of February, 1920, and on or about the 15th day of February, 1920, was the sum of Four Thousand

Eight Hundred Forty-one Dollars and Sixty-six Cents ($4,841.66).

(11) That no claims in writing with respect to the matters involved herein were made, nor was this libel filed within nine (9) months after respondent received the goods described in paragraph (2) hereof.

(12) That in stipulating the facts herein the respective parties do not concede the relevancy or materiality of any fact so stipulated.

(13) That either party may offer evidence upon matters deemed pertinent and not covered by this stipulation.

Dated: San Francisco, California, November 19, 1924.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent. [662]

19 DEC 1924

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

Received in apparent good order and condition, from S. L. JONES & COMPANY

at SAN FRANCISCO marked and numbered as below (unless otherwise noted hereon), contents and condition of contents unknown, weights, measurements, and value unknown, to be transported by the ship "WEST ALTA" now at or to arrive at the port of Oakland, to the wharf or place of discharge as may be designated by the master, or as near thereto as she may safely get, always afloat, upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with leave to call with or without pilots, to tranship to any other vessels operated by said corporation, or said Board, or for its account, to lighter from vessel to vessel and from vessel to shore, to shift ports in any order, and to proceed to and stay at any port or ports, in any rotation or order, for, or out of, the customary route and to call at any port or ports more than once, unto the port of ROTTERDAM (or as near thereto as she may safely get), and there deliver in the apparent good order and condition, of the vessel's holds, unto ORDER S. L. JONES & CO. ROTTERDAM, HOLLAND or assigns, freight being paid as hereinafter provided, they paying average accustomed (if any incurred).

MARKING: SE. MAN & CO. AMSTERDAM

Marks and Nos.	Packages	Contents	Gross Weight
K. P. K. B. F.	38	CO. NOTHING	79365
K. P. K. B. F.	38	DO.	70365
K. V. C. I.K.R.	6	DO.	2110 #
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EXHIBIT C.

DAMAGED CARGO EX SS "COCKAPONSET"; NOT RESPONSIBLE FOR LOSS OF CONTENTS OR CONDITION THEREOF

The vessel shall have liberty to deviate for the purpose of making trial trips and the ship

Freight Charges

151705 @ $3.80 per 1000 $574.85

WILLIAMS, DIMOND & CO.

Rates, weight and/or measurement subject to correction.

Prepaid freight to be considered as earned and not to be repaid to shipper, even if there be a forced interruption or abandonment of the voyage at the port of loading, a port of shelter, the port of delivery or any other port into which the ship may put or be taken, and/or even if the vessel or goods be lost, damaged or destroyed at any time of the said transit, and/or after goods be unloaded from the vessel, without negligence or with negligence in navigation or management of the vessel and that to contribute to general average whether the happening of any of the contingencies herein mentioned the said vessel is to have the right to forward the above-mentioned cargo to the port of destination, [illegible] payment for such service, whether performed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, or those of stevedores; and in case of salvage services rendered to aforesaid merchandise or freight during the voyage by a vessel operated [illegible] on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage services shall be paid for as fully as if such [illegible] vessels belonged to private owners.

It is mutually agreed that the ship shall have liberty to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the customary course of her voyage, or should the goods or any part of them be shut out from said vessel, that the carrier is authorized but not compelled to forward or transship the goods to their destination, by any other vessel, steam, motor or sail, at shipper's risk.

It is the mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond its control, or by the perils of the sea or other waters, by fire, from any cause whatsoever occurring, by barratry of the master or crew by enemies, pirates or robbers, by pillage, by arrest and restraint of princes, rulers or people, riots, strikes or stoppage of labor, by explosion, or bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collision, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the [illegible] operation of the ship not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager, by whatever name called, to make the ship, even existing at the time of shipment or sailing on the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy, nor for or by reason of explosion of cargo, rain, spray, heat or any effects of climate, heat of hold, decay, putrefaction, decomposition, rancidity, rust, presence of foreign matter upon and/or in containers and/or [illegible] with goods, injury by contact of wrappers or packages, chafing, sweat, change of character, smell, evaporation, or damage from any other goods, breakage, leakage, [illegible] or damage occasioned by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages, or injury from hooks; nor for [illegible] hooking or breaking of hooping of containers or packages; nor for land damages whether on wharf or elsewhere; nor for the obliteration, error, insufficiency, or absence of marks, [illegible] addresses or descriptions; nor for risk of craft, bulk or transshipment, including any transfer on lighters; nor for any loss or damage caused by the prolongation of the voyage; nor for damages or [illegible] to articles perishable in their nature; that the carrier shall not be considered as to the correctness of statements herein of quantity, quality, weight, contents and value and [illegible] ship on which such goods are carried are not warranted seaworthy as to any defect or deficiency not discoverable by due diligence of the owners.

It is also mutually agreed that the General Average shall be settled at San Francisco according to York-Antwerp Rules of 1890, and as to matter not therein provided for according to the law and usage of the Port of San Francisco.

This contract is subject to all the stipulations and agreements herein set forth on either side hereof, whether stamped or printed, whether or not signed or customary, and whether or not in one or several paragraphs. All said paragraphs are to be construed together.

AND FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of a special contract, whether or not signed by the shipper.

IN WITNESS WHEREOF, the Master or Agent of the said ship has affirmed to TWO Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in SAN FRANCISCO, this 6TH day of JANUARY 1925.

Accepted as to all the terms and conditions hereof.

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IT IS ALSO MUTUALLY AGREED:

1. That the carrier shall not be liable for articles excepted in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not claim any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goodsas are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed or allowed such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton), each short ton that is shipped being ascertained and agreed by the shipper to be of the greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton, or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed thereto stating such greater value.

3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being ascertained and agreed by the shipper as being to an extent of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and signed thereto stating such greater value.

4. Also, that the shipper shall be liable for any loss or damage to ship or cargo caused by dangerous, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be loaded slack or torn, the consignees shall accept such proportion of the coverings as shall be allotted by the agents of the carrier, and the same shall be declared a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, rust, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a letter being put into the post office addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the master or the carrier shall have the right under any and all circumstances, at his option, and without notice, to tranship the goods at further's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods; and if this is his judgment is incompetent, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, as the conditions of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignee by day and by night as fast as the vessel can deliver, consignee paying all lighting charges and any extra charges incurred other the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in any event be computed on the cash value of such goods at the port of destination at the time of shipment, the carrier reserving the option of replacing or reproducing such goods or his cargoes, and that all claims for part loss or damage shall be ascertained and adjusted upon this same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignee to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the packages before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loss is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are carried in consignation of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper to be such such respects to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignee shall accept such proportion of the oil or other fluid which has leaked from the consignment (and from any other consignment on said vessel containing oil or other fluids) and may have the leakage, if any, ascertained by the carrier or his agents; and such statement shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of scavenging, of bilging by passengers, of bailing or unbolting, or making or unbolting of goods, required by the master, shall be repaid to the master by the shipper, and the carrier shall have a lien for these charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligent property to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Limited Liability Act; and the rules laid down in the said Limited Liability Act and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc.", Revised Statutes all cases where proceedings or property in connection with this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States of America, against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipowner shall be entitled to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bills of Lading inconsistent with the said Act of Congress and Revised Statutes shall be annexed as absolute and said contract, and all provisions herein shall be construed in accordance with the provisions of such Act and be valid as far as contained therein.

16. Also, that if the Bill of Lading covers goods from Philippine ports, the cargo, in accordance with the requirement of the Philippine Customs service, is to be consigned, by the ship's agents, to themselves for sale purposes, that the release by the Customs House which, and there delivered into the custody of the United States Customs House, the consent of the consignee and such delivery shall constitute a full discharge of the master's responsibility under this Bill of Lading, unless it be made to appear that exception was taken to the condition of the delivery, but the consent contained in or implied with the goods was delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignee or their agents, in writing, to the ship's agents at Manila within ten days after the completion of the discharge of the vessel, and the amount of such claim stated; failure to have been received, and neither the vessel, her owners, charters or agents shall be liable thereafter.

17. Also, that, if under a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

18. Also, that, if the shipment hereunder is made at an American port, this Bill of Lading is to be read and construed as if every clause therein contained which is repugnant thereto or void and void by the Harter Act of Goods Act, 1893, had never been inserted therein or had been amended and eliminated therefrom prior to the execution thereof, and is hereof subject to all the terms and provisions of and to the exemptions from liability contained in said Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or via Suez Canal or any route.

20. Also, that the carrier shall not be responsible on shipments of bamboo, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, loss or discoloration.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims to any lien thereon are hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail when in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this Bill of Lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

[Endorsed]: Filed Nov. 20, 1924. [665]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

NOTICE TO PRODUCE.

To S. L. Jones & Company, a Corporation, Libelant Above Named, and to J. M. Mannon, Farnham P. Griffiths, and McCutchen, Olney, Mannon & Greene; its Proctors:

You and each of you are hereby notified to produce before the trial of the above-entitled matter the following documents, to wit:

1. Original loading tags or receipts given to shipper for all cargo shipped on the S. S. "West Aleta," voyage 51, sailing from San Francisco January 6, 1920.

2. All letters to and from the shipper relative to securing option for space for cargo to be shipped on the S. S. "West Aleta" and relative to booking cargo thereon.

3. Original notices or circular letters sent to shipper by Messrs. Williams, Dimond Co., relative to schedule for ports of call, and date of departure. [666]

4. Applications for insurance on cargo shipped on the S. S. "West Aleta," Voyage 51.

5. Originals of all policies issued to shipper for cargo on the "West Aleta," Voyage 51.

6. All open policies and certificates issued thereon for cargo shipped on the S. S. "West Aleta," Voyage 51.

7. Invoices showing premiums paid and certificates issued on cargo shipped on the "West Aleta," Voyage 51; and,

8. Original entry books covering open policies, in which entries relative to certificates issued thereunder were made.

IRA S. LILLICK,
Proctor for Respondent.

Due service and receipt of a copy of the within notice is hereby admitted this 24th day of December, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE.

[Endorsed]: Filed December 29, 1924. [667]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 29th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—DECEMBER 29, 1924—HEARING.

This case came on regularly this day to be heard. J. M. Mannon and F. P. Griffiths, Esqrs., appearing as proctors for Libelant and Ira S. Lillick, Chalmer G. Graham and J. Arthur Olson, Esqrs.,

appearing as proctors for respondent. Mr. Mannon introduced in evidence and read the agreed statement of facts, which was marked Libelant's Exhibit No. 1.

In accordance with the oral stipulation of the Proctors for the respective parties hereto, it is ordered that the evidence introduced in the suit of Rosenberg Bros. & Co. vs. U. S. Shipping Board Emergency Fleet Corporation, No. 17,692, may be considered as the evidence in this suit in so far as it pertains to the issues joined herein.

ORDERED that the further hearing hereof be continued until 10 o'oclock A. M. tomorrow. [668]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof in the City and County of San Francisco, on Tuesday, the 30th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT — DECEMBER 30, 1924—HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued until ten o'clock A. M. to-morrow. [669]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT — DECEMBER 31, 1924—HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing was resumed.

ORDERED that further hearing be continued to Friday, Jan. 2, 1925 at 10 A. M. [670]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 2d day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—JANUARY 2, 1925—HEARING (RESUMED).

The parties by their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued to Tuesday, Jan. 6, 1925, at 10 A. M. [671]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 6th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—JANUARY 6, 1925—HEARING (RESUMED).

The parties and their attorneys being present as heretofore, the hearing was resumed.

ORDERED further hearing continued to 10 o'clock A. M. to-morrow. [672]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 7th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—JANUARY 7, 1925—ORDER SUBMITTING SUIT ON BRIEFS IN CASE No. 17,692.

The parties and the attorneys being present as heretofore, the hearing was resumed.

ORDERED that this suit be submitted on briefs to be filed in case No. 17,692. [673]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 23d day of September, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT — SEPTEMBER 23, 1925 — ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANT.

Pursuant to opinion filed case No. 17,693, ordered that a decree enter in favor of libelant. [674]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

STIPULATION AS TO AMOUNT OF RECOVERY.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that in the event of any recovery by libelant herein against respondent herein, the amount of such recovery shall be the sum of Four thousand Eighty-three and Fifty-four Hundredths (4,083.54) Dollars, plus such interest and costs as the Court may allow.

Dated July 25, 1925.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Jul. 27, 1925. [675]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.—No. 18,046.

S. L. JONES & CO. (a Corporation),
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),
Respondent.

FINAL DECREE.

The above-entitled cause came on regularly for hearing December 29, 30 and 31, 1924, and January 2, 6 and 7, 1925, before Honorable Frank H. Kerrigan, United States District Judge. Libelant appeared by J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, its proctors, and respondent appeared by Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., its proctors.

Evidence oral and documentary was introduced, briefs were filed and the cause was submitted to the Court for decision. The Court being fully advised in the premises filed its decision and opinion herein, holding and deciding that libelant should recover from respondent the sum of Four Thousand Eighty-three and Fifty-four Hundredths (4,083.54) Dollars, together with interest at the

rate of seven (7) per cent per annum thereon from February 15, 1920, which said interest to date hereof amounts to the sum of [676] One Thousand Six Hundred and Two and 30/100 (1,602.30) Dollars, and costs.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant above named, S. L. Jones & Co. (a corporation), do have and recover from respondent, United States Shipping Board Emergency Fleet Corporation (a corporation), the sum of Five Thousand Six Hundred Eighty-five and 84/100 (5,685.84) Dollars, together with interest thereon at the rate of seven (7) per cent per annum from the date of this decree until paid, together with the costs to be hereafter taxed.

Dated this 24th day of September, 1925.

FRANK H. KERRIGAN,
United States District Judge.

Approved as to form, and five (5) days' lodging with the Court waived.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Entered in Vol. 19, Judg. and Decrees, at page 296.

[Endorsed]: Filed Sep. 24, 1925. [677]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

MOTION TO MODIFY FINAL DECREE.

Now comes the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent in the above-entitled matter, appearing by its proctors, Ira S. Lillick and Chalmers G. Graham, and makes this its motion to modify, in the manner hereinafter set forth, the final decree in the above matter entered and filed the 24th day of September, 1925.

Said respondent moves that said decree, now providing for interest at the rate of 7% per annum, be modified and changed to provide for interest at the rate of 4% per annum.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

To S. L. Jones & Co. and to J. M. Mannon, Jr., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors:

You and each of you will please take notice that the above-entitled motion will be called for hearing on Saturday, the 24th day of October, 1925, or as soon thereafter as proctors [678] for the respondent may be heard, in the courtroom of the above-entitled court, Post Office Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California.

Dated this 23d day of October, 1925.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Receipt of a copy of the within motion and notice is hereby admitted this 23 day of Oct. 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Oct. 23, 1925. [679]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—OCTOBER 26, 1925—ORDER DENYING MOTION TO MODIFY FINAL DECREE.

The motion to modify the decree herein, heretofore heard and submitted, being now fully considered, IT IS ORDERED that said motion be and same is hereby denied. [680]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

NOTICE OF APPEAL.

To S. L. Jones & Company, a Corporation, Libelant in the Above-entitled Cause, and to J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division:

You, and each of you, will please take notice, that the United States Shipping Board Emergency Fleet Corporation, respondent in the above-entitled cause, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, in Admiralty, entered in said cause on the 24th day of September, 1925, ordering, adjudging and decreeing that libelant, S. L. Jones & Company, a Corporation, recover the amount sued for by reason of the matters alleged in the libel in said cause with interest and costs and finding the amount due to said libelant to be the sum of $5,685.84, with costs, and interest thereon from the date of said decree.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Dated: San Francisco, California, the 9th day of November, 1925. [681]

Due service and receipt of a copy of the within notice of appeal is hereby admitted this 13th day of November, 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,

Proctors for Libelant.

[Endorsed]: Filed Nov. 13, 1925. [682]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ASSIGNMENT OF ERRORS.

Comes now the United States Shipping Board Emergency Fleet Corporation, a corporation respondent and appellant in the above-entitled cause (hereinafter termed "Fleet Corporation") and assigns error in the conclusions, findings, proceedings and decree of the District Court, as follows:

I.

That the District Court erred in ordering and entering a decree in favor of S. L. Jones & Company, a corporation, libelant and appellee above named against the Fleet Corporation, respondent and appellant above named, for the recovery from said respondent and appellant of the principal sum of $4,083.54, together with interest thereon at the rate of 7% per annum from the 15th day of February, 1920, to the 24th day of September, 1925, in

the further sum of $1,602.30, together with interest and costs thereon.

II.

That the District Court erred in not dismissing the libel of S. L. Jones & Company against the Fleet Corporation. [683]

III.

That the District Court erred in holding that the law has attached a fixed and certain meaning to the following liberty to call clause

> "Received in apparent good order and condition at San Francisco * * * to be transported by the ship 'West Aleta' * * * *with leave * * * to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port* of Cardiff (Rotterdam) * * * ."

IV.

That the District Court erred in holding that under such a clause the vessel did not have the liberty to proceed beyond the port of discharge named in the bill of lading and that the vessel under such a clause is limited in the application of the clause "to ports substantially on the course of the voyage described between its termini and before the port of destination."

V.

That the District Court erred in finding that the principal reason that the "West Aleta" took the course she followed on her voyage was convenience of the vessel in loading return cargo.

VI.

That the District Court erred in holding that the only distinction between the facts in the above-entitled cause and that of Smith vs. U. S. S. B. E. F. C. (2 Fed. (2d) 390) is that in the present case the greater part of the cargo was destined for Cardiff whereas in that case all of the cargo was shipped to Rotterdam.

VII.

That the District Court erred in holding that the phrase in the bill of lading before the court in this case "out [684] of the customary route" did not extend the liberties otherwise given in the said bill of lading.

IX.

That the District Court erred in holding that the liberties clause herein relied upon must be construed with reference to a particular voyage named in a particular bill of lading which covers only a part of the cargo between the ports of departure and the ports of destination named in the said bill of lading.

X.

That the District Court erred in holding that the voyage described in the said bill of lading was a specific one and covered the shortest geographical distance between the ports of departure and the ports of destination named therein.

XI.

That the District Court erred in holding that the liberties clause herein relied upon had no application to any port or ports not naturally and usually ports of call on the voyage.

XII.

That the District Court erred in holding that in proceeding on the voyage in which the "West Aleta" was at the time of her loss the vessel was initiating a new voyage before an old voyage was completed.

XIII.

That the District Court erred in holding that the only question present was one of fact, namely: whether Hamburg is a port on the course of a voyage from San Francisco to Cardiff or Rotterdam.

XIV.

That the District Court erred in holding that the [685] custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XV.

That the District Court erred in holding that evidence of the custom was inadmissible, and in excluding the same from consideration.

XVI.

That the District Court erred in holding that the liberties clause is plain and unambiguous, and in holding that the words "out of the customary route" are plain and unambiguous.

XVII.

That the District Court erred in holding that knowledge of the libelant that the "West Aleta" was to proceed to Hamburg before Rotterdam and Cardiff was unimportant.

XVIII.

That the District Court erred in holding that

facts and circumstances extraneous to the bill of lading must be disregarded.

XIX.

That the District Court erred in holding that all evidence tending to indicate that the libelant knew or ought to have known of the course which was intended to be taken by the "West Aleta" must be excluded.

XX.

That the District Court erred in holding that evidence tending to prove knowledge on the part of a shipper that a particular ship will deviate from a route is inadmissible, and in excluding the same from consideration.

XXI.

That the District Court erred in holding that the [686] "West Aleta" deviated in proceeding to Hamburg before she had discharged her Cardiff and Rotterdam cargo.

XXII.

That the District Court erred in holding that the "West Aleta" in so proceeding to Hamburg before discharging her Cardiff and Rotterdam cargo, under the circumstances of this case, made the respondent and the appellant an insurer of the said cargo.

XXIII.

That the District Court erred in holding that the Fleet Corporation was not entitled to the benefit of the insurance paid to S. L. Jones & Company.

XXIV.

That the District Court erred in holding that

the custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XXV.

That the District Court erred in holding that a deviation avoids the contract of carriage.

XXVI.

That the District Court erred in holding that it was not a condition *preceding* to suit for loss against a carrier for deviation that the cargo owner had been deprived of its right against its insurer.

XXVII.

That the District Court erred in not holding that the Fleet Corporation was only suable in admiralty under the provisions of the "Suits in Admiralty Act of 1920."

XXVIII.

That the District Court erred in not holding that the suit of S. L. Jones & Company was barred under the [687] provisions of Section 5 of the Suits in Admiralty Act of 1920.

XXIX.

That the District Court erred in not holding that the suit of S. L. Jones & Company was barred by laches.

XXX.

That the District Court erred in holding that the "West Aleta" was a vessel operated by the Fleet Corporation.

XXXI.

That the District Court erred in awarding the

libelant S. L. Jones & Company interest at the rate of 7% per annum.

XXXII.

That the District Court erred after holding that the libelant was entitled to interest, in not awarding the libelant interest at the rate of 4% per annum as provided in Section 3 of the Suits in Admiralty Act of 1920.

XXXIII.

That the District Court erred in not holding that the burden was on the libelant of proving what was the "customary route."

XXXIV.

That the District Court erred in not holding that the burden was on the libelant of proving that the "West Aleta" departed from the "customary route," and in so doing exceeded the privileges given in the liberties clause when she proceeded toward Hamburg as her first port of call.

XXXV.

That the District Court erred in not holding that the libelant herein had failed to prove that the "West Aleta" departed from the customary route. [688]

XXXVI.

That the District Court erred in not holding that under the terms and provisions of Section 3 of the Harter Act the Fleet Corporation was not an insurer.

XXXVII.

That the District Court erred in not holding that the owner having exercised due diligence to

make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted from faults or errors in navigation or in the management of said vessel.

XXXVIII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted and arose from dangers of the sea and/or other navigable waters and/or acts of God.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant.

Due service and receipt of a copy of the within assignment of errors is hereby admitted this 23 day of December, 1925.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
EDWARD J. McCUTCHEN,
Proctors for Libelant. [689]

[Endorsed]: Filed Dec. 23, 1925. [690]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

STIPULATION EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1925, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same hereby is, extended to and including the 15th day of December, 1925.

EDWARD J. McCUTCHEN.
J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
IRA S. LILLICK.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1925. [691]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 4, 1926, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between

the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same is, hereby extended to and including the 4th day of January, 1926.

McCUTCHEN, OLNEY, MANNON & GREENE.

IRA S. LILLICK.

It is so ordered.

_____,

United States District Judge.

[Endorsed]: Filed Dec. 23, 1925. [692]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO APOSTLES ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 692 pages, numbered from 1 to 692, inclusive, contain a full, true and correct transcript of the records and proceedings in the cases of Rosenberg Bros. & Co. vs. United States Shipping Board Emergency Fleet Corp., No. 17,692; California Wine Association, a Corp., vs. United States Shipping Board Emergency Fleet Corp., No. 17,693; and S. L. Jones & Company, a Corp., vs. United States Shipping Board Emergency Fleet Corp., No. 18,046, as the same now remain on file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of One Hundred Seven Dollars and Fifty-five

Cents ($107.55) and that the same will be charged against the United States in my next quarterly account.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 31st day of December, A. D. 1925.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [693]

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. No. 4748. United States Shipping Board Emergency Fleet Corporation, a Corporation, Appellant, vs. Rosenberg Brothers & Company, a Corporation, Appellee. No. 4749. United States Shipping Board Emergency Fleet Corporation, a Corporation, Appellant, vs. California Wine Association, a Corporation, Appellee. No. 4750. United States Shipping Board Emergency Fleet Corporation, a Corporation, Appellant, vs. S. L. Jones & Company, a Corporation, Appellee. Apostles on Appeals. Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed January 4, 1926.

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Apostles on Appeals. Filed January 15, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States

Circuit Court of Appeals

For the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the eleventh day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER OF SUBMISSION.

ORDERED appeal in each of the above-entitled causes argued by Messrs. Ira S. Lillick and F. M. Boal, proctors for the appellant, and by Mr. J. M. Mannon, Jr., proctor for the appellee, and submitted to the Court for consideration and decision, with leave to respective proctors to file further briefs 10x10.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the tenth day of May, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREES.

By direction of the Honorable William B. Gilbert, William H. Hunt and Frank H. Rudkin, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled causes be forthwith filed by the Clerk and that decrees be filed and recorded in the minutes of this court on each of the appeals in accordance with the opinion filed therein.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before GILBERT, HUNT and RUDKIN, Circuit Judges.

HUNT, Circuit Judge:

These are appeals in admiralty from decrees against the Shipping Board Emergency Fleet Corporation in three cases, consolidated, instituted by the shippers and owners of cargoes lost on the steamship "West Aleta" of the European Pacific line, operated by the respondents under contract by

Williams, Dimond & Company, from ports on the Pacific Coast to ports in the United Kingdom and the continent of Europe. The suits were carried on as between the cargo insurers, who paid the losses in full, and the operators of the ship, who were fully covered by insurance against any damages that might have to be paid for deviation.

Libelants claimed for failure to deliver, caused by deviation from the voyage. Respondents answered that the loss was occasioned by stranding, error in navigation, peril of the sea, and that under the terms of the contract of carriage and the Harter Act (27 St. 445), they were not liable.

The goods were shipped in 1920 at San Francisco under separate bills of lading, some naming Cardiff, Wales, some naming Rotterdam, Holland, as the ports of destination. Taking the bill of lading in one of the cases as an exemplar, it sets forth receipt of the merchandise to be transported by the "West Aleta" to be carried on said vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board "with leave * * * to touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff, and there deliver in like apparent good order and condition at the vessel's tackles under order," etc. On the face of the bill of lading there was the following clause: "The vessel shall have liberty to deviate for the purpose of making trial trips and shall pay any reasonable increased cost of cargo

insurance, if any, incurred in consequence thereof." After a description of the goods there is the following clause: "It is mutually agreed that the ship shall have liberty * * * to deviate for the purpose of saving life or property," and in the conditions included on the reverse side of the bill of lading this clause: "Also, that if on account of weather, * * * war, or other disturbances * * * or any causes beyond the control of the carrier, it should be considered impracticable or unsafe in the opinion of the master to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip * * * ."

The ship left San Francisco in January, 1920, and on February 10th sighted Bishop Rocks, a part of the Scilly Islands which mark the entrance to Bristol Channel. She did not proceed directly to Cardiff, but, passing the entrance to the port, proceeded easterly through the Straits of Dover and on February 11th was abreast of the Hook of Holland at the entrance to the port of Rotterdam. The ship did not go to Rotterdam, but took a course for Hamburg, Germany. The master, apprehensive because of mines planted in the North Sea during the World War, changed his course on February 11th, and on the 12th, believing he was safely out of the mine fields, headed east for what he took to be Nordeney lightship. Immediately after the last change of course the ship struck a sand ridge which extended

from the westerly end of Terschelling Island, and soon broke in two.

For more than a month prior to the sailing of the ship the European Pacific line advertised the "West Aleta" for "Hamburg, Rotterdam and Cardiff" in "The Guide," a shipping paper of San Francisco. One insurance policy was issued to the California Wine Association, covering wine to Cardiff and wine and liquor to Rotterdam on the "West Aleta," " * * * via Panama Canal to Rotterdam and Cardiff." The policy had a clause, "Held covered at a premium to be arranged in case of deviation or change of voyage, or of any omission or error in the description of the interest, vessel or voyage."

Using the Cardiff receipt and bill of lading as comprehending the several cases, we have an original contract on a voyage from San Francisco, port of shipment, to Cardiff, port of destination, with leave to the ship to touch at any ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once.

An interpretation of the contract solely by legal import and construction of the words used is that the voyage was to Cardiff, with the privilege of going to other ports in or out of order between the termini, in prosecuting the real objects of the adventure intended by the parties. We cannot regard the language of the liberty-to-call clause, permitting the ship to call at any ports in any order in or out of the customary route, as extensive enough to embrace in the voyage to Cardiff permission to go 750 miles beyond Cardiff and to call at Hamburg and then

return to Cardiff. (Gawdner vs. Senhouse, 128 En. R. 7.) Established rules of construction of policies are that the right of liberty to call is to be availed of as subordinate to the principle that the port or ports which the assured may visit shall be only those which are properly in the course of the voyage described, and in pursuance of the general purposes of the adventure embraced within the termini named in the policies. (Glynn vs. Margetson, 1 Q. B. 337; 1893 L. R. 351.) The Supreme Court of Massachusetts in Seccomb et al. vs. Provincial Insurance Company, 92 Mass. 305, said: "The only safe rule of construction is that which confines the meaning of a clause in a voyage policy giving liberty to touch at different ports to a permission to visit those only which are within the scope of the voyage insured." The scope of the voyage may include ports not exactly in the ordinary track of the specific voyage, but not those far outside or beyond the ordinary track. (The Wells City, 57 Fed. 317; affirmed, 61 Fed. 857.) Bringing the principle to the immediate case, the ports to which the "West Aleta" could go were those which, in a business sense, would be passed in the usual course of the voyage from San Francisco to Cardiff. A few of the many well-considered cases are: Leduc vs. Ward, 20 Q. B. D. (1888); U. S. Shipping Board vs. Bunge & Bern, 41 T. L. R. 73; Davis vs. Garrett, 130 E. R. 1456; Ardan S. S. Co. vs. Theband, 35 Fed. 620. But nothing in the bill of lading justifies the view that a voyage to Hamburg was the adventure in con-

templation. (Smith vs. U. S. Shipping Board, etc., 2 F. (2) 390.)

There is strength too, in the reasoning of the Court in United States Shipping Board vs. Bunge and Bern, *supra,* that the general liberty to deviate for the purpose of saving life and property gives some indications pointing to the view that the parties meant to give to their language a limited sense. In emergent circumstances, to save life or property, the ship could deviate without any restriction. Having such a clause under examination, the English Court of Appeals, speaking by Lord Bankes in United States Shipping Board vs. Bunge & Bern, *supra,* said: "It appears to me that the clause itself contains indications which, in my opinion, point to the conclusion that the parties intentionally used the language they did in its limited conventional sense. A distinction is drawn between calling at a port for bunkering or supplies and deviating generally; the right to deviate without any restriction is conferred for the purpose of saving life or property. To obtain bunkers or supplies the liberty is confined to the right 'to call at any port or ports in any order.' There seems to me to be reason in this."

But, it is said that the usage and practice of the trade gave to the bill of lading of the "West Aleta" a meaning which allowed her to go to Hamburg, Rotterdam and Cardiff, for which she was held out as a common carrier, in the order in which traffic and cargo conditions dictated. Doubtless underwriters are presumed to have knowledge of what is usually done by a ship in such a voyage, and the

description of the voyage in the policy refers, of course, to the usual manner of making it. But the oral testimony in support of the contention that the usual and customary manner of performing a voyage from San Francisco to Cardiff was by going first to Hamburg and then to Rotterdam and then back to Cardiff, lacks precision and is not convincing. Out of twelve vessels in the European Pacific service, only two called at Hamburg; none went to Rotterdam. There was testimony that the ships of the European Pacific line recognized a "range of ports" which included Bordeaux on the South, and Hamburg on the North, and would include the east coast of Ireland, and the practical understanding of the liberty clause of the "West Aleta" was to go to any port in any order within the range. Whether oral testimony of the practical understanding was admissible may well be doubted (Aetna Ins. Co. vs. Sacramento Stockton S. S. Co., 273 Fed. 55; The Delaware, 81 U. S. 579; Arnold on Marine Insurance, sec. 56); but passing that point and treating such evidence as legally received in defining what was the customary route, it fell far short of establishing a usage which would countervail the general maritime practice with reference to which the policy was made, that the ship shall pursue a direct course between her two termini, with permission to call only at any port or ports in or interjacent to the customary route. (The Reeside, No. 11657, Fed. Cas.)

Our conclusion is that there was a deviation, the effect of which was to end the contract between the

shippers and the carrier, thus making the carrier responsible for the loss of the merchandise. (Pacific Coast vs. Yukon Ind. Trans. Co., 155 Fed. 29; The Sarnia, 278 Fed. 459.)

Inasmuch as the deviation displaced the contract, the provisions of the Harter Act of 1893 afford no protection from the consequences of the wrongful act. As giving some support to that opinion reference may be had to the concluding part of section 3 of that act, where the words limit the liability in cases of loss arising from saving or attempting to save life or property at sea "or from deviation in rendering such services." It is reasonable to say that where there has been a deviation for a purpose other than to save life or property, there is liability.

The damages were measurable by the market value of the goods at the destination to which the ship undertook to carry them. (St. Johns N. F. Ship Corp. vs. Companhia, 263 U. S. 119; U. S. S. Co. vs. Haskins, 181 Fed. 962.) No avoidance of the consequence of the act of deviation can be predicated upon the ground that the damages must be limited to such additional insurance premium as the shippers had to pay on account of the deviation. Respondent was insured against liability for deviation and the defense in this suit on behalf of respondent is by the insurer, successor to American Steamship Owners Mutual Protection and Indemnity Association. It is a fact that insurance was paid in full to libelants, but it is generally held that upon payment of the loss the insurer was subrogated to the rights of the insured. That doctrine

was sustained by this Court in Pacific Coast Steamship Co. vs. Bancroft Whitney Co., 94 Fed. 180, and Steamship Wellesley vs. Hooper & Co., 185 Fed. 733; The Citta Di Messina, 169 Fed. 472.

It is suggested by the appellant that the Fleet Corporation is not liable because it was only the agent for the carrier, the United States. In Sloan Shipyard Corporation vs. U. S. Shipping Board, 258 U. S. 549, it was held that the Fleet Corporation is answerable for its acts and may not be relieved upon the ground of agency. Justice Holmes there stated the general rule that a person within the jurisdiction always is amenable to the law, and continued: "Supposing the powers of the Fleet Corporation to have been given to a single man, we doubt if anyone would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of government he might be, and for the greatest ends; but the agent, because he is agent, does not cease to be answerable for his acts." The present suit is not one against the United States, but against the Fleet Corporation, and if the act of the Fleet Corporation was unlawful even though a suit have been brought against the United States, nevertheless, those injured are not barred of a remedy against the agent that did the wrongful act. (In re Eastern Shore Shipbuilding Corporation, U. S. Shipping Board, etc., vs. Wood, 274 Fed. 893; Providence Engineering Corp. vs. Downey Ship-

building Corp., 294 Fed. 641; certiorari denied, 44 S. Ct. 334; The Panol, 1925 A. M. C. 1173; United States Shipbuilding Corp. etc., vs. Banque Russo Asiatique, 286 Fed. 918; Smith vs. U. S. Shipping Board, etc., 2 F. (2) 390.

We must also decide against the contention that if the Fleet Corporation is liable there was an exclusive remedy under the suits in admiralty act, March 9, 1920 (41 St. 525). In Blamburg Bros. vs. United States, 260 U. S. 452, it was held that under the suits in admiralty act, which provides that in view of the provisions for libel *in personam* no vessel owned by the United States shall be subject to seizure by judicial process in the United States, and that in a case where, if such vessel were privately owned a proceeding in admiralty could be maintained, a libel *in personam* may be brought against the United States, "no libel can be maintained against the United States while the vessel is not in a port of the United States or one of her possessions." (She Wan & Sons vs. United States, 266 U. S. 108.) The purpose of the suits in admiralty act as construed in the decisions referred to, is to substitute an action *in personam* for one *in rem*. In our case the ship, having been wrecked off the coast of a foreign country, and not having been in any port of the United States at the time the libelants brought these suits, and not having been at that time a merchant vessel, suits *in rem* could not have been brought under the suits in admiralty act. (The Cape Fear, 8 F. (2) 80; Atlantic Fruit Co. vs. United States, 8 F. (2) 81;

Markle vs. United States, 8 F. (2) 87; Mack Engineering Co. vs. United States, 291 Fed. 713.)

Appellants ask this Court to apply the rule of laches. If respondents relied upon that defense they should have pleaded accordingly. (Green Star S. S. Co. vs. Nan Yang Bros. Tobacco Co., 3 F. (2) 369.) However, it has been held in this circuit that a court of admiralty will, by analogy, follow the state statute of limitations. (Pacific Coast S. S. Co. vs. Bancroft Whitney, *supra;* Crasci vs. Standard Fisheries, 7 F. (2) 378; Benedict on Admiralty, sec. 554.) Engel vs. Davenport, —— U. S. ——, decided April 12, 1926, is not in conflict with our view.

The decrees are affirmed.

[Endorsed]: Opinion. Filed May 10, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 10, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the

appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 10, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be.

and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 11, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),

Respondent and Appellant,

vs.

ROSENBERG BROTHERS & CO.,

Libelant and Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),

Respondent and Appellant,

vs.

CALIFORNIA WINE ASSOCIATION (a Corporation),

Libelant and Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corration),

Respondent and Appellant,

vs.

S. L. JONES & COMPANY (a Corporation),

Libelant and Appellee.

APPELLANT'S PETITION FOR A REHEARING.

To the Honorable WILLIAM B. GILBERT, Presiding Judge, and the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the appellant, the United States Shipping Board Emergency Fleet Corporation, and prays that a rehearing be granted in this case for the reason that the Court decided liability on the theory of tort, a theory which was not advanced by the libelant-appellees either in the District Court or in this court, and one which the appellant has had no opportunity to answer.

This court said in the course of its opinion of May 10, 1926, page 8:

> "The present suit is not one against the United States but against the Fleet Corporation and if the act of the Fleet Corporation was unlawful even though a suit might have been brought against the United States, never-

theless, those injured are not barred of a remedy against the agent that did the wrongful act."

This theory was not at any time advanced by the libelant-appellees. The libels state in their preamble:

"in a cause of contract and deviation civil and maritime."

The libels proceed on the theory that the appellant is liable because the "West Aleta" did not perform her contracts of transportation. They state under Point I of their brief, page 19:

"The 'West Aleta' was bound by her bills of lading to follow the ordinary sea track to Cardiff and Rotterdam and the fixed and certain meaning of the deviation clause did not authorize passing those ports and going beyond."

and finally under Point V, page 163:

"The deviation displaced the contract and made the respondent an insurer of the cargo."

In answer to the appellant's argument on laches the appellees state on page 223 of their brief:

"In this state a period of four years is allowed for commencing suit on written contracts. (C. C. P. Sec. 337.)"

The period of limitations under the California statute for torts for injuries to property is three years (per citation).

The decision of the District Court was based on contract principles and not on principles of tort liability and the District Court at no time consid-

ered the question of tort liability. It is stated (Record 686) in discussing the question of laches:

> "The final contention that laches are imputable to libelants is without merit, for the reason that these suits were brought well within the 4-year period of limitations prescribed by the California statute."

The Court was referring, of course, to the statute relating to suits on written contracts. Its reasoning on laches would no otherwise have disposed of the claim of S. L. Jones & Company on laches because that libel was filed on November 19, 1923 (Record 787), more than three years after the loss of the goods in question. The damages awarded by the District Court were on contract principles and not on tort principles.

This Court impliedly finds in its opinion an unlawful act on the part of the appellant. There is nothing in the record to support such a finding. This the appellant has had no opportuntiy of calling to the Court's attention. The only act that could be called unlawful or tortious in any sense is that of issuing sailing orders to the master of the "West Aleta." This was not done by the appellant or any of its officers. The sailing orders were issued by Williams, Dimond & Company, the managing operator appointed by the appellant for the owner, who thereby became the owner's agent.

Fred A. Hooper testified (Record 202):

> "Q. What was your position, or in what capacity did you serve with Williams, Dimond & Co. in 1919 and 1920?

A. As general freight agent, in charge of traffic."

and in cross-examination (Record 248) he testified:

"Q. And what, if anything, did you have to do with the routing *of the routing* of the vessels?

A. The routing of the vessels, the determining of the ports, and the manner in which they operated, was at my own discretion."

Mr. Mannon in his opening statement said (Record 191):

"First in regard to the sailing orders, the managers of the vessel, that is, Williams, Dimond & Co., who issued these sailing orders, required that she go to Hamburg first."

The appellant took no part in issuing those sailing orders.

Williams, Dimond & Company were the managing agents employed by the Fleet Corporation, the appellant, for the account of the owner of the "West Aleta," the United States. They thereby became agents not of the Fleet Corporation, the intermediate agent, but of the United States, the principal. The torts of a sub-agent employed by an intermediate agent whose employment is authorized by his principal are not the torts of the intermediate agent.

It is stated in the opinion that laches was not pleaded. The answer (Record 45, 47) sets up as a separate defense the provisions in clause 10 of the bill of lading placing a limitation on the time for giving notice of claim and for suing. This is

sufficiently broad to cover the defense of laches. It was so considered by the District Court which disposed of the question of laches on its merits and did not suggest that it had not been properly pleaded. No objection on this score was made by the libelants in the District Court. That the answer is sufficiently broad to cover laches seems clear from the decision of the Circuit Court of Appeals for the Second Circuit in the General Gorgas, 1926 A. M. C. 823, decided on May 3, 1926.* This case also applied the analogy of Federal and not State statute in determining laches.

Wherefore, the appellant prays that it be granted a rehearing in order that it may have an opportunity to properly present to this Court an argument showing that on the facts in the record and on the law as applied to those facts there is no liability on the part of the appellant.

Dated, San Francisco, June 8, 1926.

Respectfully submitted,
IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Appellant and Petitioner.
A. M. BOAL,
F. R. CONWAY,
O. P. M. BROWN,
H. F. BIRNBAUM,
Of Counsel.

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*Certified copy filed with clerk of court with this petition.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner in the above-entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco, June 8, 1926.

IRA S. LILLICK,
Of Counsel for Appellant and Petitioner.

[Endorsed]: Printed Appellant's Petition for a Rehearing. Filed June 9, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourteenth day of June, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the Honorable William B. Gilbert, William H. Hunt, and Frank H. Rudkin, Circuit Judges, before whom the causes were heard, IT IS ORDERED that the petition, filed June 8, 1926, on behalf of appellant in each of above causes for a rehearing of the above-entitled causes be, and hereby is denied.

At a stated term, to wit, the October term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the fifteenth day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

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Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER STAYING ISSUANCE OF MANDATES.

Upon oral application of Mr. Chalmers G. Graham, proctor for the appellant in each of above causes, and good cause therefor appearing, ORDERED issuance of mandate of this Court under Rule 32 in each of the above-entitled causes stayed for a period of sixty (60) days from and after June 19, 1926.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

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Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two volumes, consisting of eight hundred and sixty-nine (869) pages, numbered from and including 1 to and including 869, and Book of Exhibits, consisting of one hundred forty-two (142) pages, numbered from and including 1 to and including 142, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled cases in the said Circuit Court of Appeals, made pursuant to request of proctor for the appellant and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of July, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

872 Supreme Court of the United States

No. 119

Order allowing certiorari
Filed November 23, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further orderd that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

64946—27——2

Nos. 4748, 4749, 4750

United States

Circuit Court of Appeals

For the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,
Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
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No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,
Appellee.

Apostles on Appeals.

BOOK OF EXHIBITS.

Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

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vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

STIPULATION RE REPRODUCTION OF EXHIBITS, ETC.

IT IS HEREBY STIPULATED by and between the proctors for the appellant and appellees in the above-entitled matter that all of the exhibits introduced in evidence in the District Court of the United States for the Northern District of California, Southern Division, in the above cases, and sent up to the above-entitled court in their original form, may be printed or photostated in a separate volume, to be known as Apostles on Appeal "Volume of Exhibits," with the exception of the hereinafter specifically designated exhibits or parts of exhibits, as agreed upon by the respective parties, and marked on the said original exhibits in the office of the Clerk of the above court.

That as to these latter exhibits, it is hereby stipulated and agreed that they may be brought to the attention of the above court in their original form and need not be printed or photostated.

The exhibits hereinabove referred to and which it is the intention of the above parties to have printed or photostated and included in said volume are as follows:

"LIBELANTS' EXHIBITS.

No. 3. Mine warnings—57.
No. 4. Mine warnings—63.
No. 5. Mine warnings—63a.
No. 6. Mine warnings—65.

No. 7. Suppt. to Pilot Chart—1919.
No. 8. Suppt. to Pilot Chart—1920.
No. 9. Letter, Feb. 24, 1922.
No. 10. File of advertisements in 'Seattle Daily Index.'
No. 11. List of Steamships.
No. 12. Letter—Nov. 25, 1919.
No. 13. Bill of Lading—Isthmian, S. S. L.
No. 14. Bill of Lading—Holland-American Line.
No. 15. Bill of Lading—Harrison Line.
No. 16. Bill of Lading—United Am. Lines.
No. 17. Bill of Lading—French Line.
No. 18. Stip. as to ads in 'Guide.'
No. 19. Photostat—'Guide'—June 23, 1919.
No. 20. Photostat—'Guide'—July 17, 1919.
No. 20.—Smith's 'Stowage Plan.'
No. 22. Jory's 'Stowage Plan.'

RESPONDENT'S EXHIBITS.

A. Copy 'Guide' Jan. 5, 1920.
B. 'Daily Coml. News,' Jan. 2, 1920.
C. Manifest,—Voy. 51.
D. Copy 'Guide'—Dec. 29, 1924.
E. Surveyor's Certf.—Jan. 6, 1920.
F. Stowage Plan 'West Aleta.'
G. Manifest—SS. 'Effingham.'
H. Bill of Lading—Canadian Gov. M. M.
I. Letter—Cal. Wine—Dec. 16, 1919.
J. Letter—Rosenberg, Dec. 8, 1919.
K. Letter—Rosenberg, Dec. 10, 1919.
L. Application for Ins. Letter Jan. 23, 1920.

M. Bill of Lading, Jan. 2, 1920, S. L. Jones & Co.
N. Letter, Rosenberg Bros., 12/4/19.
O. Letter, Dec. 10, 1919."

The exhibits which it is intended shall not be printed or photostated, and shall be presented to the Court in their original form, are as follows:

"LIBELANTS' EXHIBITS.

No. 1. Agreed Statement of Facts.
No. 2. Map of the North Sea.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
Proctors for Appellees.
IRA S. LILLICK,
CHALMERS S. GRAHAM,
Proctors for Appellant.

[Endorsed]: No. 4748. Stipulation Re Reproduction of Exhibits, etc. Filed Jan. 29, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

LIBELANT'S EXHIBIT No. 3.
NAVY DEPARTMENT.
U. S. HYDROGRAPHIC OFFICE.
Washington, D. C.
MINE WARNINGS TO MARINERS.
No. 57. December 10, 1919.

The following which is the latest information that has been received by the Hydrographic Office is taken from Mine Warnings to Mariners Nos. 301, 305, 306, and 310 issued by the British Admiralty,

London, England, and cancels "Mine Warnings to Mariners" Nos. 42, 49, and 51 issued by the Hydrographic Office under dates of October 1, and November 3 and 11, 1919, relating to Areas Nos. 1, 2, 3, 4, and 5 of the North Sea. Authority: International Mine Clearance Committee:

North Sea.

1. Mariners are hereby informed that in the North Sea Zone described below navigation is unrestricted except as laid down in Sections 2 and 3 of this Warning.

Bounded on the north by the parallel of lat. 61° N.; on the east and south by the Scandinavian coast to the meridian of lon. 9° E., thence by that meridian to the coast of Denmark, and thence by the northwest European coast as far as Boulogne, and thence by the line joining Boulogne and Dungeness, and on the west by the east and north coasts of Great Britian as far as Cape Wrath; thence by the meridian of lon. 5° W.

2. Mine Fields.

(A) Helgoland Bight.

Except as hereinafter provided ships are to avoid the area bounded as follows:

(1) On the north by a line passing through the following positions: Lat. 56° 12′ N., lon. 5°30′ E.; lat. 56° 12′ N., lon. 7°′ E.; and lat. 56°′ N.; lon. 7° 48′ E.

(2) On the east by a line passing through the following positions: Lat. 56°′ N., lon. 7° 48′ E.; lat. 55° 42′ N., lon. 7° 48′ E.; lat. 55° 42′ N., lon. 7° 45′ E.; lat. 55° 36′ No., lon. 7° 45′ E.; lat. 55° 36′ N.; lon. 7° 40′ E.; lat. 55° 34′ N., lon. 7° 40′ E.; lat. 55° 27′

30″ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 57′ E.; lat. 55° 10′ N.; lon. 7° 30′ E.; lat. 54° 55′ N.; lon. 7° 30′ E.; lat. 54° 41′ N.; lon. 7° E.; lat. 54° 24′ N., lon. 6° 50′ E; lat. 54° 24′ N., lon. 5° 50′ E.; and lat. 53° 31′ N., lon. 5° 50′ E.

(3) On the south by a line drawn parallel to the low water mark and 3 miles from it from lat. 53° 31′ N.; lon. 5° 50′ E.; to lat. 53° 28′ 30″ N., lon. 5° 21′ E., and thence by a line passing through the following positions: Lat. 53° 28′ N., lon. 5° 21′ E.; lat. 53° 29′ N., lon. 5° 20′ E.; lat. 53° 28′ N., lon. 5° 17′ E.; lat. 53° 28′ N., lon. 5° 15′ E.; lat. 53° 28′ N. 30″ N., lon. 5° 15′ E.; lat. 53° 28′ N., lon. 5° 07′ E.; lat. 53° 26′ N., lon. 5° E.; lat. 53° 54′ N., lon. 5° E.; lat. 53° 54′ N., lon. 4° 56′ 30″ E.; and lat. 53° 26′ N., lon. 4° 02′ E.

(4) On the west by a line passing through the following positions: Lat. 53° 26′ N., lon. 4° 02′ E.; lat. 53° 35′ N.; lon. 3° 58′ E.; lat. 54° N., lon. 4° 04′ E.; lat. 54° 34′ N., lon. 4° 19′ E.; lat. 54° 53′ N., lon. 5° E.; lat. 54° 57′ N., lon. 4° 29′ 30″ E.; lat. 55° 02′ N., lon. 4° 22′ E.; lat. 55° 48′ N., lon. 4° 53′ E.; and lat. 56° 12′ N., lon. 5° 30′ E.

(D) Caution.

Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom.

For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

3. Routes.

(A) All the waters in the North Sea Zone are open to surface navigation with the exception of the areas described in Section 2 of this Warning. The following routes are also open:

(B) Helgoland Bight Channel.

A channel has been swept, the center line of which passes through the following positions: Lat. 54° 49′ 30″ N., lon. 4° 20′ E.; lat. 55° 09′ N., lon. 5° 49′ E.; lat. 54° 54′ N., lon. 6° 10′ E.; and lat. 54° 39′ 30″ N., lon. 6° 59′ E. This channel is 10 miles wide, 5 miles either side of the center line between Dogger Bank Zuid Light Vessel and No. 5 light buoy. Between Nos. 5 and 3 light buoys it is 5½ miles wide, 1½ miles on the south side of the center line and 4 miles on the north side. For positions of light buoys see Section 4 of Sub-section (C) of this Warning. It should be noted that some of these marks are not now in the center line of the channel. The channel as described above should be followed and not the line of the marks.

(Continued)

Sheet No. 2 of No. 57 December 10, 1919

North Sea (Continued).

(C) Borkum Reef to Haaks Channel.

A channel 12 miles wide, 6 miles on either side of the center line which passes through the following positions has been open to navigation: Lat. 53° 48′ N., lon. 5° 50′ E.; lat. 53° 48′ N., lon. 5° E.; and lat. 53° 19′ 30″ N., lon. 4° 06′ E.

(D) Jutland Coastal Route.

A route has now been buoyed along the Jutland Coast through Danish territorial waters, and

through Soren Bovbjergs Dyb. This route is only intended for use during daylight and can be used by vessels drawing up to 18½ feet of water. The lights on the light buoys and the temporary lights on Bjergehuse, Havrvig, and Kjoergaarde Beacons, will however, be exhibited. Bjergehuse Beacon exhibits a temporary fixed white light visible 12 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag).

Havrvig Beacon exhibits a temporary fixed green light visible 7 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Kjoergaarde Beacon exhibits a temporary fixed red light visible 9 miles between the bearings 41° (N. 52° E. Mag.) and 151° (S. 18° E. Mag.).

Pilots for Esbjerg will meet incoming vessels in the fairway north of Soren Bovbjergs Dyb.

For positions and descriptions of light buoys and buoys see Section 4, Sub-section (E) of this Warning. The main and auxiliary channels at Nordmans Tief are clear of moored mines.

(F) Northern Approach to the Scheldt.

Vessels bound from the Northward to ports in the River Scheldt should pass to the eastward of the Schouwen Bank Light and Whistle Buoy and the Noord Steen Bank Light Buoy. From thence they should steer to pass as close as possible to the South Banjaard Light Buoy and to the Kaloo Bank Light and Whistle Buoy and then proceed through the east Gat to the Scheldt.

NOTE.—Vessels passing to the westward of the South Banjaard Light Buoy and the Kaloo Bank Light and Whistle Buoy should pass as close as

possible to those buoys owing to the existence of a line of moored mines near the edge of the Northern approaches to the Straits of Dover Mine Field.

Belgian and Dutch Pilot Vessels cruise in the vicinity of lat. 51°50′ N., lon. 3°28′E., and off the entrance to Brouwershaven Gat.

4. Light Vessels and Light Buoys.

(A) Helgoland Bight Mine Field (Western Side).

The following light vessels and light buoys have been established off the western edge of the Helgoland Bight Mine Field:

(a) Dogger Bank Noord Light Vessel, exhibiting a flashing white light every 15 seconds in lat. 56°N., lon. 5°E.; fog siren every 30 seconds.

(b) No. 1 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55°39′30″N., long. 4°45′E.

(c) No. 2 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55°22′30″N., lon. 4°29′E.

(d) No. 3 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55°39′30″N., lon. 4°29′E.

(e) Dogger Bank Zuid Light Vessel, exhibiting a group flashing white light showing two flashes every 15 seconds in lat. 54°45′N., lon. 3°58′30″E.; fog siren, two blasts every 2 minutes.

(f) No. 4 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 54°20′N., lon. 3°56′E.

(g) No. 5 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53°54′N., lon. 3°54′E.

(h) No. 5A black can light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 3°29′N., lon. 3°52′E.

(B) Helgoland Bight Mine Field (Eastern Side).

The following light buoys have been established on the eastern edge of the Helgoland Bight Mine Field:

(a) A light buoy marked "F. 2." exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 55°10′ N., lon. 7°30′ E.

(b) A black light buoy marked "F. 1" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54°55′ N., lon. 7°30′ E.

(c) A light and whistle buoy marked "F. 3" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54°24′N., lon. 6°50′ E.

(d) A light and whistle buoy marked "F. 4" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54°24′ N., lon. 5° 50′ E.

(e) A black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53°48′42″ N., lon. 7°13′18″ E.

(Continued)

Sheet No. 3 of No. 57. December 10, 1919

North Sea (Continued)

NOTE.—This light buoy will remain in position until the Norderney Light Vessel is replaced on her peace time position.

(C) Helgoland Bight Channel.

The following light buoys have been established on the Helgoland Bight Route:

(a) No. 2 black light buoy exhibiting a group flashing white light showing two flashes every 18 seconds in (approximately) lat. 54°33′30″ N., lon. 7° 23′30″E.

(b) No. 3 black light buoy exhibiting a group occulting white light showing two eclipses every 12 seconds in (approximately) lat. 54°41′N., lon. 7°E.

NOTE.—At a distance of 110 yards westward of No. 3 light buoy and whistle buoy No. 3A has been established exhibiting a group occulting red light having two eclipses every 12 seconds.

(c) No. 4 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54°49′30″ N., lon. 6°30′ E.

(d) No. 5 black light buoy exhibiting a group flashing white light showing two flashes, every 12 seconds, in (approximately) lat. 54°55′30″ N., lon. 6°18′ E.

(e) No. 5A black light and whistle buoy exhibiting a flashing white light every 7½ seconds in lat. 55°09′18″ N., lon. 5°49′30″ E.

(f) No. 6 black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in (approximately) lat. 55° N., lon. 5° 10′E.

(g) No. 7 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 53′ 30″ N., lon. 4° 35′ E.

NOTE.—Several reports have been received that the positions of the above marks are unreliable

and in some cases that the light buoys were extinguished. The last report stated that all lights were burning.

(D) Borkum Reef to Haaks Channel.

The following light vessels and light buoys have been established on the Borkum Reef to Haaks Channel:

(1) Wester Emms Sud Light Vessel has been withdrawn and Borkum Reef Light Vessel will be replaced on her peace time station in lat. 53° 46′ N. lon. 6° 04′ E.

(2) A black light and whistle buoy marked "A" exhibiting an occulting white light every 8 seconds in lat. 53° 48′ N., lon. 5° 50 E.

(3) A black light and whistle buoy marked "B" exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 5° 34′ 12″ E.

(4) A black light and whistle buoy marked "C" exhibiting a group flashing white light showing two flashes every 18 seconds in lat. 53° 49′ 06″ N., lon. 5° 16′ 30″ E.

(5) Norderney Light Vessel exhibiting a fixed white light in lat. 53° 49′ N., lon. 5° E. Near the light vessel is a watch buoy.

(6) A black light and whistle buoy marked "D" exhibiting a flashing white light every 7½ seconds in (approximately) lat. 53° 41′ N., lon. 4° 47′ E.

(7) A black light and whistle buoy marked "E" exhibiting an occulting white light every 8 seconds in (approximately) lat. 53° 34′ 30″ N., lon. 4° 34′ E.

(8) A black light and bell buoy marked "F" exhibiting a group flashing white light showing

four flashes every 18 seconds in (approximately) lat. 53° 28′ N., lon. 4° 21′ 30″ E.

(9) A black light and whistle buoy marked "G" exhibiting a group flashing white light showing two flashes every 18 seconds in (approximately) lat. 53° 21′ N., lon. 4° 08′ 30″ E.

(E) Jutland Coastal Route.

The following light buoys and buoys have been established on the Jutland Coastal Route:

(1) A black staff with one ball over one cone point upwards in lat. 56° 22′ 24″ N., lon. 8° 01′ 42″ E.

(2) A black staff with two cones points upwards in lat. 56° 15′ 36″ N., lon. 8° 02′ 15″ E.

(3) A black staff with one ball in lat. 56° 07′ 45″ N., lon. 8° 01′ 20″ E.

(4) A black staff with one cone point downward in lat. 55° 59′ 15″ N., lon. 8° 02′ 36″ E.

(5) A black staff with two cones points downwards in lat. 55° 53′ 58″ N., lon. 8° 04′ 18″ E.

(6) A black staff with one ball in lat. 55° 48′ 41″ N., lon. 8° 05′ 12″ E.

(7) A black staff with one cone point upwards in lat. 55° 41′ 32″ N., lon. 8° 03′ 45″ E.

(8) A white can buoy with three down turned brooms in lat. 55° 36′ 20″ N., lon. 8° 01′ 30″ E.

(9) A red light and whistle buoy exhibiting a flashing white light every 15 seconds in lat. 55° 35′ 19″ N., lon. 8° E.

(10) A red conical buoy with three upturned brooms in lat. 55° 34′ 20″ N., lon. 7° 57′ 36″ E.

(11) A red conical buoy with one upturned broom in lat. 55° 32′ 40″ N., lon. 7° 55′ 40″ E.

(12) A red and white horizontally striped light and whistle buoy exhibiting an occulting red light every 7 seconds in lat. 55° 31′ 24″ N., lon. 7° 56′ 06″ E. (Soren Bovbjergs Dyd Sud).

(13) A red conical buoy with two upturned brooms in lat. 55° 31′ 18″ N., lon. 7° 57′ 34″ E.

(Continued)

Sheet No. 4 of No. 57. December 10, 1919

North Sea (Continued)

(14) A green wreck buoy with two flags lying to the northeastward of the wreck in lat. 55° 30′ 55″ N., lon. 7° 58′ 17″ E.

(15) A red conical buoy with three upturned brooms in lat. 55° 30′ 31″ N., lon. 7° 59′ 03″ E.

(16) The Cancer Light and Whistle Buoy painted red, in lat. 55° 29′ 27″ N., lon. 8° 02′ 02″ E., exhibiting a flashing white light every 15 seconds.

(17) A white can buoy with two down turned brooms in lat. 55° 32′ 10″ N., lon. 7° 56′ 45″ E.

(18) A white can buoy with one down turned broom in lat. 55° 31′ 18″ N., lon. 7° 58′ 14″ E.

(19) A white can buoy with three down turned brooms in lat. 55° 30′ 48″ N., lon. 7° 59′ 30″ E.

E. SIMPSON,

Rear Admiral, U. S. Navy Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 3. Mine Warnings to Mariners.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 4.

NAVY DEPARTMENT.

U. S. HYDROGRAPHIC OFFICE.

Washington, D. C.

MINE WARNINGS TO MARINERS.

No. 63. January 6, 1920.

The following which is the latest information that has been received by the Hydrographic Office is taken from Mine Warnings to Mariners No. 321 issued by the British Admiralty, London, England, and cancels "Mine Warnings to Mariners" Nos. 57 and 59 issued by the Hydrographic Office under dates of December 10 and 22, 1919, relating to the North Sea. Authority: International Mine Clearance Committee:

North Sea.

1. Mariners are hereby informed that in the North Sea Zone described below navigation is unrestricted except as laid down in Sections 2 and 3 of this Warning.

Bounded on the north by the parallel of lat. 61° N.; on the east and south by the Scandinavian coast to the meridian of lon. 9° E., thence by that meridian to the coast of Denmark, and thence by the northwest European coast as far as Boulogne, and thence by the line joining Boulogne and Dungeness, and on the west by the east and north coasts of Great Britain as far as Cape Wrath; thence by the meridian of lon. 5° W.

2. Mine Fields.

(A) Helgoland Bight.

Except as hereinafter provided ships are to avoid the area bounded as follows:

(1) On the north by a line passing through the following positions: Lat. 56° 12′ N., lon. 5° 30′ E.; lat. 56° 12′ N., lon. 7° E.; and lat. 56° N., lon. 7° 48′ E.

(2) On the east by a line passing through the following positions: Lat. 56° N., lon. 7° 48′ E.; lat. 55° 42′ N., lon. 7 ° 48′ E.; lat. 55° 42′ N., lon. 7° 45′ E.; lat. 55° 36′ N., lon. 7° 45′ E.; lat. 55° 36′ N., lon. 7° 40′ E.; lat. 55° 34′ N., lon. 7° 40′ E.; lat. 55° 27′ 30″ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 8° 05′ E.; lat. 55° 20′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 57′ E., lat. 55° 10′ N., lon. 7° 30′ E.; lat. 54° 55′ N., lon. 7° 30′ E.; lat. 54° 41′ N., lon. 7° E.; lat. 54° 24′ N., lon. 6° 50′ E.; lat. 54° 24′ N., lon. 5° 50′ E.; and lat. 53° 31′ N., lon. 5° 50′ E.

(3) On the south by a line drawn parallel to the low water mark and 3 miles from it from lat. 53° 31′ N., lon. 5° 50′ E., to lat. 53° 28′ 30″ N., lon. 5° 21′ E., and thence by a line passing through the following positions: Lat. 53° 28′ N., lon. 5° 21′ E.; lat. 53° 29′ N., lon. 5° 20′ E.; lat. 53° 28′ N., lon. 5° 17′ E.; lat. 53° 28′ N., lon. 5° 15′ E.; lat. 53° 28′ 30″ N., lon. 5° 15′ E.; lat. 53° 28′ N., lon. 5° 07′ E.; lat. 53° 26′ N., lon. 5° E.; lat. 53° 54′ N., lon. 5° E.; and lat. 53° 54′ N., lon. 4° 03′ E.

(4) On the west by a line passing through the following positions: Lat. 53° 54′ N., lon. 4° 03′ E.;

lat. 54° N., lon. 4° 04′ E.; lat. 54° 34′ N., lon. 4° 19′ E.; lat. 54° 53′ N., lon. 5° E.; lat. 54° 57′ N., lon. 4° 29′ 30″ E.; lat. 55° 02′ N., lon. 4° 22′ E.; lat. 55° 48′ N., lon. 4° 53′ E.; and lat. 56° 12′ N., lon. 5° 30′ E.

(B) Caution.

Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom.

For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

3. Routes.

(A) All the waters in the North Sea Zone are open to surface navigation with the exception of the areas described in Section 2 of this Warning. The following routes are also open:

(B) Helgoland Bight Channel.

A channel has been swept, the center line of which passes through the following positions: Lat. 54° 49′ 30″ N., lon. 4° 20′ E.; lat. 55° 09′ N., lon. 5° 49′ E.; lat. 54° 54′ N., lon. 6° 10′ E.; and lat. 54° 39′ 30″ N., lon. 6° 59′ E. This channel is 10 miles wide, 5 miles on either side of the center line between Dogger Bank Zuid Light Vessel and No. 5 light buoy. Between Nos. 5 and 3 (Continued)

light buoys it is 5½ miles wide, 1½ miles on the south side of the center line and 4 miles on the north side. For positions of light buoys see Section 4 of

Subsection (C) of this Warning. It should be noted that some of these marks are not now in the center line of the channel. The channel as described above should be followed and not the line of the marks.

(C) Borkum Reef to Haaks Channel.

A channel 12 miles wide, through the mine field described in Section 2 sub-section A has been opened to navigation. The northern boundary of this channel is the parallel of lat. 53° 54′ N. and the southern boundary is a line joining the following positions. (a) Lat. 53° 42′ N., lon. 5° 50′ E.; (b) lat. 53° 42′ N., lon. 5° 04′ E.; and (c) lat. 53° 40′ N., lon. 5° E.

(D) Jutland Coastal Route.

A route has now been buoyed along the Jutland Coast, through Danish territorial waters, and through Soren Bovbjergs Dyb. This route is only intended for use during daylight and can be used by vessels drawing up to 18½ feet of water. The lights on the light buoys and the temporary lights on Bjergehuse, Havrvig, and Kjoergaarde Beacons, will, however, be exhibited. Bjergehuse Beacon exhibits a temporary fixed white light visible 12 miles between the bearings of 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Havrvig Beacon exhibits a temporary fixed green light visible 7 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Kjoergaarde Beacon exhibits a temporary fixed red light visible 9 miles between the bearings 41° (N. 52° E. Mag.) and 151° (S. 18° E. Mag.).

Pilots for Esbjerg will meet incoming vessels in the fairway north of Soren Bovbjergs Dyb.

For positions and descriptions of light buoys and buoys see Section 4, Sub-section (E) of this Warning. The main and auxiliary channels at Nordmans Tief are clear of moored mines.

4. Light Vessels and Light Buoys.

(A) Helgoland Bight Mine Field (Western Side).

The following light vessels and light buoys have been established off the western edge of the Helgoland Bight Mine Field:

(a) Dogger Bank Noord Light Vessel, exhibiting a flashing white light every 15 seconds in lat. 56° N., lon. 5° E.; fog siren every 30 seconds.

(b) No. 1 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 39′ 30″ N., lon. 4° 45′ E.

(c) No. 2 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 22′ 30″ N., lon. 4° 29′ E.

(d) No. 3 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 07′ N., lon. 4° 15′ E. (It is reported that this buoy has disappeared.)

(e) Dogger Bank Zuid Light Vessel, exhibiting a group flashing white light showing two flashes every 15 seconds in lat. 54° 45′ N., lon. 3° 58′ 30″ E.; fog siren gives two blasts every 2 minutes.

(f) No. 4 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 54° 20′ N., lon. 3° 56′ E. (The light on this buoy is reported extinguished.)

(g) No. 5 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53° 54′ N., lon. 3° 54′ E.

(h) No. 5A black can light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53° 29′ N., lon. 3° 52′ E.

(B) Helgoland Bight Mine Field (Eastern Side).

The following light buoys have been established on the eastern side of the Helgoland Bight Mine Field:

(a) A light buoy marked "F. 1," exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 55° 10′ N., lon. 7° 30′ E. (Reported extinguished.)

(b) A black light buoy marked "F. 3" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 55′ N., lon. 7° 30′ E.

(c) A light and whistle buoy marked "F. 5" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 6° 50′ E.

(d) A light and whistle buoy marked "F. 6" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 5° 50′ E.

(e) A black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 7° 13′ 18″ E.

(Continued)

Sheet No. 3 of No. 63. January 6, 1920.

North Sea (Continued)

NOTE.—This light buoy will remain in position until the Norderney Light Vessel is replaced on her peace time position.

(C) Helgoland Bight Channel.

The following light buoys have been established on the Helgoland Bight Route:

(a) No. 2 black light buoy exhibiting a group flashing white light showing two flashes, every 18 seconds in (approximately) lat. 54° 33′ 30″ N., lon. 7° 23′ 30″ E.

(b) No. 3 black light buoy exhibiting a group occulting white light showing two eclipses every 12 seconds in (approximately) lat. 54° 41′ N., lon. 7° E.

NOTE.—At a distance of 110 yards westward of No. 3 light buoy a light and whistle buoy No. 3A has been established exhibiting a group occulting red light having two eclipses every 12 seconds.

NOTE.—Both these light buoys are reported to be extinguished.

(c) No. 4 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 49′ 30″ N., lon. 6° 30′ E. (Reported extinguished.)

(d) No. 5 black light buoy exhibiting a group flashing white light showing two flashes every 12 seconds, in (approximately) lat. 54° 55′ 30″ N., lon. 6° 18′ E.

(e) No. 5A black light and whistle buoy exhibit-

ing a group flashing white light every 7½ seconds in lat. 55° 09′ 18″ N., lon. 5° 49′ 30″ E.

(f) No. 6 black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in (approximately) lat. 55° N., lon. 5° 10′ E. (Reported extinguished.)

(g) No. 7 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 53′ 30″ N., lon. 4° 35′ E.

NOTE.—Several reports have been received that the positions of the above marks are unreliable.

(D) Borkum Reef to Haaks Channel.

The following light vessels and light buoys have been established on the Borkum Reef to Haaks Channel:

(1) A black light and whistle buoy marked "A" exhibiting an occulting white light every 8 seconds in lat. 53° 48′ N., lon. 5° 50′ E.

(2) A black light and whistle buoy marked "B" exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 5° 34′ 12″ E.

(3) A black light and whistle buoy marked "C" exhibiting a group flashing white light showing two flashes every 18 seconds in lat. 53° 49′ 06″ N., lon. 5° 16′ 30″ E.

(4) A light vessel exhibiting a group flashing white light showing three flashes every 10 seconds in lat. 53° 49′ N., lon. 5° E. Fog siren gives two blasts and one blast alternately every half minute.

NOTE.—Near the Light Vessel is a watch buoy. This light vessel will shortly be moved to position lat. 53° 34′ 30″ N., lon. 4° 34′ E.

(5) A black light and whistle buoy marked "D" exhibiting a flashing white light every 7½ seconds in (approximately) lat. 53° 41′ N., lon. 4° 47′ E.

NOTE.—This light and whistle buoy will shortly be renamed Light Buoy "E."

(6) A black light and whistle buoy marked "E" exhibiting an occulting white light every 8 seconds in (approximately) lat. 53° 34′ 30″ N., lon. 4° 34′ E.

NOTE.—This light and whistle buoy will shortly be moved to position lat. 53° 49′, lon. 5° E., and renamed Light Buoy "D."

(E) Jutland Coastal Route.

The following light buoys and buoys have been established on the Jutland Coastal Route:

(1) A black staff with one ball over one cone point upwards in lat. 56° 22′ 24″ N., lon. 8° 01′ 42″ E.

(2) A black staff with two cones points upwards in lat. 56° 15′ 36″ N., lon. 8° 02′ 15″ E.

(3) A black staff with one ball in lat. 56° 07′ 45″ N., lon. 8° 01′ 20″ E.

(4) A black staff with one cone point downward in lat. 55° 59′ 15″ N., lon. 8° 02′ 36″ E.

(5) A black staff with two cones points downwards in lat. 55° 53′ 58″ N., lon. 8° 04′ 18″ E.

(6) A black staff with one ball in lat. 55° 48′ 41″ N., lon. 8° 05′ 12″ E.

(7) A black staff with one cone point upwards in lat. 55° 41′ 32″ N., lon. 8° 03′ 45″ E.

(8) A white can buoy with three down turned brooms in lat. 55° 36′ 20″ N., lon. 8° 01′ 30″ E.

(9) A red light and whistle buoy exhibiting a flashing white light every 15 seconds in lat. 55° 35′ 19″ N., lon. 8° E.

(10) A red conical buoy with three upturned brooms in lat. 55° 34′ 20″ N., lon. 7° 57′ 36″ E.

(11) A red conical buoy with one upturned broom in lat. 55° 32′ 40″ N., lon. 7° 55′ 40″ E.

(12) A red and white horizontally striped light and whistle buoy exhibiting an occulting red light every 7 seconds in lat. 55° 31′ 24″ N., lon. 7° 56′ 06″ E. (Soren Bovbjergs Dyd Sud.)

(Continued)

Sheet No. 4 of No. 63. January 6, 1920

North Sea (Continued)

(13) A red conical buoy with two upturned brooms in lat. 55° 31′ 18″ N., lon. 7° 57′ 34″ E.

(14) A green wreck buoy with two flags lying to the northeastward of the wreck in lat. 55° 30′ 55″ N., lon. 7° 58′ 17″ E.

(15) A red conical buoy with three upturned brooms in lat. 55° 30′ 31″ N., lon. 7° 59′ 03″ E.

(16) The Cancer Light and Whistle Buoy painted red, exhibiting a flashing white light every 15 seconds in lat. 55° 29′ 27″ N., lon. 8° 02′ 02″ E.

(17) A white can buoy with two down turned brooms in lat. 55° 32′ 10″ N., lon. 7° 56′ 45″ E.

(18) A white can buoy with one down turned broom in lat. 55° 31′ 18″ N., lon. 7° 58′ 14″ E.

(19) A white can buoy with three down turned brooms in lat. 55° 30′ 48″ N., lon. 7° 59′ 30″ E.

W. C. ASSERSON,
Captain, U. S. Navy,
Acting Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 4. Filed Dec. 29, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. Mine Warnings to Mariners.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 5.

NAVY DEPARTMENT,
U. S. HYDROGRAPHIC OFFICE,
Washington, D. C.

MINE WARNINGS TO MARINERS.

No. 63A. January 6, 1920.

(Cancels Former No. 58A.)

The following is a list of U. S. Mine Warnings to Mariners, which are still in force, and copies of which may be obtained from the Hydrographic Office or its Branch Offices:

Zone	Number of Warning
GENERAL	44
NORTH SEA	63
BALTIC	
Baltic, Area No. 1	58

MEDITERRANEAN

Mediterranean, Areas Nos. 1, 2, 3 and 4 ... 50
Addendum No. 1 61
Mediterranean, Area No. 5 62
Mediterranean, Areas Nos. 6 and 7 52
Addendum No. 1 60
Mediterranean, Area No. 8 .....
.....Chart Supplement No. 21
Mediterranean, Area No. 8 (Southwest Portion) 53
Mediterranean, Area No. 8 (Northwest Portion) 54
Mediterranean, Area No. 8 (Northeast Portion) 55
Mediterranean, Area No. 8 (Southeast Portion) 56

CAUTION.—Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom. For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

NOTE.—In addition to the above Mine Warnings to Mariners masters are advised that the Hydrographic Office issued the following charts illustrating the information contained in the Warnings.

Supplement to the Pilot Chart of the North Atlantic Ocean showing the mined areas and safe channels in the "North Sea." Published December, 1919.

Supplement to the Pilot Chart of the North Atlantic Ocean showing the mined areas and safe channels in the "Waters on the West Coasts of France, Spain, and Portugal, and in the Mediterranean Sea." Published July, 1919.

Supplement to "Mine Warnings to Mariners" No. 21 showing the mined areas and safe channels in the Black Sea.

W. C. ASSERSON,
Captain, U. S. Navy,
Acting Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 5. Filed Dec. 29, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 6.

NAVY DEPARTMENT,
U. S. HYDROGRAPHIC OFFICE,
Washington, D. C.

MINE WARNINGS TO MARINERS.

No. 65. February 17, 1920.

The following which is the latest information that has been received by the Hydrographic Office is taken from Mine Warnings to Mariners Nos. 323 and 328 issued by the British Admiralty, London, England, and cancels "Mine Warnings to Mariners" No. 63 issued by the Hydrographic

Office under date of January 6, 1920, relating to the North Sea. Authority: International Mine Clearance Committee:

North Sea.

1. Mariners are hereby informed that in the North Sea Zone described below navigation is unrestricted except as laid down in Sections 2 and 3 of this Warning.

Bounded on the north by the parallel of lat. 61° N.; on the east and south by the Scandinavian coast to the meridian of lon. 9° E., thence by that meridian to the coast of Denmark, and thence by the northwest European coast as far as Boulogne, and thence by the line joining Boulogne and Dungeness, and on the west by the east and north coasts of Great Britain as far as Cape Wrath; thence by the meridian of lon. 5° W.

2. Mine Fields.

(A) Helgoland Bight.

Except as hereinafter provided ships are to avoid the area bounded as follows:

(1) On the north by a line passing through the following positions: Lat. 56° 12′ N., lon. 5° 30′ E.; lat. 56° 12′ N., lon. 7° E.; and lat. 56° 02′ N., lon. 7° 40′ E.

(2) On the east by a line passing through the following positions: Lat. 56° 02′ N., lon. 7° 40′ E.; lat. 55° 34′ N., lon. 7° 40′ E.; lat. 55° 28′ 45″ N., lon. 8° 00′ E.; lat. 55° 20′ N., lon. 8° 00′ E.; lat. 55° 20′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 57′ E.; lat. 55° 10′ N., lon. 7° 30′ E.; lat. 54° 55′ N., lon. 7° 30′ E.; lat. 54° 41′ N., lon. 7° E; lat. 54° 24′ N., lon. 6°

50′ E.; lat. 54° 24′ N., lon. 5° 50′ E.; and lat. 53° 31′ N., lon. 5° 50′ E.

(3) On the south by a line drawn parallel to the low water mark and 3 miles from it from lat. 53° 32′ N., lon. 5° 50′ E., to lat. 53° 28′ 30″ N., lon. 5° 21′ E., and thence by a line passing through the following positions: Lat. 53° 28′ N., lon. 5° 21′ E.; lat. 53° 29′ N., lon. 5° 20′ E.; lat. 53° 28′ N., lon. 5° 17′ E.; lat. 53° 28′ N., lon. 5° 15′ E.; lat. 53° 28′ 30″ N., lon. 5° 15′ E.; lat. 53° 28′ N., lon. 5° 07′ E.; lat. 53° 26′ N., lon. 5° E.; lat. 53° 54′ N., lon. 5° E.; and lat. 53° 54′ N., lon. 4° 03′ E.

(4) On the west by a line passing through the following positions: Lat. 53° 54′ N., lon. 4° 03′ E.; lat. 54° N., lon. 4° 04′ E.; lat. 54° 34′ N., lon. 4° 19′ E.; lat. 54° 53′ N., lon. 5° E.; lat. 54° 57′ N., lon. 4° 29′ 30″ E.; lat. 55° 02′ N., lon. 4° 22′ E.; lat. 55° 48′ N., lon. 4° 53′ E.; and lat. 56° 12′ N., lon. 5° 30′ E.

(B) Caution.

Vessels are cautioned against anchoring, except in cases of emergency, submarines should not dive, and trawling is prohibited in certain areas where it is possible that sunken mines may still be lying on the bottom.

For limits of these areas see British Admiralty Notices to Mariners, and the Hydrographic Office Notice to Mariners.

3. Routes.

(A) All the waters in the North Sea Zone are open to surface navigation with the exception of the areas described in Section 2 of this Warning. The following routes are also open:

(B) Helgoland Bight Channel.

A channel has been swept, the center line of which passes through the following positions: Lat. 54° 49′ 30″ N., lon. 4° 20′ E.; lat. 55° 09′ N., lon. 5° 49′ E.; lat. 54° 54′ N., lon. 6° 10′ E.; and lat. 54° 39′ 30″ N., lon. 6° 59′ E. This channel is 10 miles wide, 5 miles on either side of the center line between Dogger Bank Zuid Light Vessel and No. 5 light buoy. Between Nos. 5 and 3 light buoys it is 5½ miles wide, 1½ miles on the south side of the center line and 4 miles on the north side. For positions of light buoys see Section 4 of Sub-section (C) of this Warning. It should be noted that some of these marks are not now in the center line of the channel. The channel as described above should be followed and not the line of the marks.

(C) Borkum Reef to Haaks Channel.

A channel 12 miles wide, through the mine field described in Section 2 sub-section A has been

(Continued)

opened to navigation. The northern boundary of this channel is the parallel of lat. 53° 54′ N., and the southern boundary is a line joining the following positions. (a) Lat. 53° 42′ N., lon. 5° 50′ E.; (b) lat. 53° 42′ N., lon. 5° 04′ E.; and (c) 53° 40′ N., lon. 5° E.

(D) Jutland Coastal Route.

A route has now been buoyed along the Jutland Coast through Danish territorial waters, and through Soren Bovjergs Dyb. This route is only intended for use during daylight and can be used

by vessels drawing up to 18½ feet of water. The lights on the light buoys and the temporary lights on Bjergehuse, Hævrvig, and Kjoergaarde Beacons, will however, be exhibited. Bjergehuse Beacon exhibits a temporary fixed white light visible 12 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.)

Havrvig Beacon exhibits a temporary fixed green light visible 7 miles between the bearings 35° (N. 46° E. Mag.) and 145° (S. 24° E. Mag.).

Kjoergaarde Beacon exhibits a temporary fixed red light visible 9 miles between the bearings 41° (N. 52° E. Mag.) and 151° (S. 18° E. Mag.).

Pilots for Esbjerg will meet incoming vessels in the fairway north of Soren Bovbjergs Dyb.

For positions and descriptions of light buoys and buoys see Section 4, Sub-section (E) of this Warning. The main and auxiliary channels at Nordmæns Tief are clear of moored mines.

4. Light Vessels and Light Buoys.

(A) Helgoland Bight Mine Field (Western Side).

The following light vessels and light buoys have been established off the western edge of the Helgoland Bight Mine Field:

(a) Dogger Bank Noord Light Vessel, exhibiting a flashing white light every 15 seconds in lat. 56° N., lon. 5° E.; fog siren every 30 seconds.

(b) No. 1 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 39′ 30″ N., lon. 4° 45′ E.

NOTE.—This buoy is reported to have drifted about 30 miles 20° (N. 34° E. Mag.) from its charted position.

(c) No. 2 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 22′ 30″ N., lon. 4° 29′ E.

(d) No. 3 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 55° 07′ N., lon. 4° 15′ E.

(e) Dogger Bank Zuid Light Vessel, exhibiting a group flashing white light showing two flashes every 15 seconds in lat. 54° 45′ N., lon. 3° 58′ 30″ E.; fog siren gives two blasts every 2 minutes.

(f) No. 4 black conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 54° 20′ N., lon. 3° 56′ E.

(g) No. 5 red conical light and whistle buoy exhibiting an occulting white light every 10 seconds in lat. 53° 54′ N., lon. 3° 54′ E.

(B) Helgoland Bight Mine Field (Eastern Side).

The following light buoys have been established on the eastern side of the Helgoland Bight Mine Field:

(a) A light buoy marked "F. 1." exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 55° 10′ N., lon. 7° 30′ E.

(b) A black light buoy marked "F. 3" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 55′ N., lon. 7° 30′ E.

(c) A light and whistle buoy marked "F. 5" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 60° 50′ E.

(d) A light and whistle buoy marked "F. 6" exhibiting a group flashing white light showing two flashes every 12 seconds in lat. 54° 24′ N., lon. 5° 50′ E.

(e) A black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 7° 13′ 18″ E.

NOTE.—This light buoy will remain in position until the Norderney Light Vessel is replaced on her peace time position.

(C) Helgoland Bight Channel.

The following light buoys have been established on the Helgoland Bight Route:

(a) No. 2 black light buoy exhibiting a group flashing white light showing two flashes every 18 seconds in (approximately) lat. 54° 33′ 30″ N., lon. 7° 23′ 30″ E.

(b) No. 3 black light buoy exhibiting a group occulting white light showing two eclipses every 12 seconds in (approximately) lat. 54° 41′ N., lon. 7° E.

NOTE.—At a distance of 110 yards westward of No. 3 light buoy a light and whistle buoy No. 3A has been established exhibiting a group occulting red light having two eclipses every 12 seconds.

(Continued)

Sheet No. 3 of No. 65. February 17, 1920.

North Sea (Continued)

NOTE.—Both of these light buoys are reported to be extinguished.

(c) No. 4 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 49′ 30″ N., lon. 6° 30′ E. (Reported extinguished).

(d) No. 5 black light buoy exhibiting a group flashing white light showing two flashes every 12 seconds, in (approximately) lat. 54° 55′ 30″ N., lon. 6° 18′ E.

(e) No. 5A black light and whistle buoy exhibiting a group flashing white light every 7½ seconds in lat. 55° 09′ 18″ N., lon. 5° 49′ 30″ E.

(f) No. 6 black light buoy exhibiting a group flashing white light showing four flashes every 18 seconds in (approximately) lat. 55° N., lon. 5° 10′ E. (Reported extinguished).

(g) No. 7 black light buoy exhibiting a flashing white light every 7½ seconds in (approximately) lat. 54° 53′ 30″ N., lon. 4° 35′ E.

NOTE.—Several reports have been received that the positions of the above marks are unreliable.

(D) Borkum Reef to Haaks Channel.

The following light vessels and light buoys have been established on the Borkum Reef to Haaks Channel:

(1) A black light and whistle buoy marked "A" exhibiting an occulting white light every 8 seconds in lat. 53° 48′ N., lon. 5° 50′ E.

(2) A black light and whistle buoy marked "B" exhibiting a group flashing a white light showing four flashes every 18 seconds in lat. 53° 48′ 42″ N., lon. 5° 34′ 12″ E.

(3) A black light and whistle buoy marked "C" exhibiting a group flashing white light showing two flashes every 18 seconds in lat. 53° 49′ 06″ N., lon. 5° 16′ 30″ E.

(4) A black light and whistle buoy marked "D" exhibiting an occulting white light every 8 seconds in lat. 53° 49′ N., lon. 5° E.

(5) A black light and whistle buoy marked "E" exhibiting a flashing white light every 7½ seconds in (approximately) lat. 53° 41′ N., lon. 4°

47′ E. NOTE.—This buoy has disappeared.

(6) A light vessel exhibiting a group flashing white light showing two flashes every 10 seconds in lat. 53° 34′ 36″ N., lon. 4° 33′ 54″ E. Fog siren gives two blasts and one blast alternately every half minute. (This light vessel is reported to be exhibiting a fixed white light temporarily.) NOTE. —Near the light vessel is a watch buoy.

(E) Jutland Coastal Route.

The following light buoys and buoys have been established on the Jutland Coastal Route:

(1) A black staff with one ball over one cone point upwards in lat. 56° 22′ 24″ N., lon. 8° 01′ 42″ E.

(2) A black staff with two cones points upwards in lat. 56° 15′ 36″ N., lon. 8° 02′ 15″ E.

(3) A black staff with one ball in lat. 56° 07′ 45″ N., lon. 8° 01′ 20″ E.

(4) A black staff with one cone point downward in lat. 55° 59′ 15″ N., lon. 8° 02′ 36″ E.

(5) A black staff with two cones point downwards in lat. 55° 53′ 58″ N., lon. 8° 04′ 18″ E.

(6) A black staff with one ball in lat. 55° 48′ 41″ N., lon. 8° 05′ 12″ E.

(7) A black staff with one cone point upwards in lat. 55° 41′ 32″ N., lon. 8° 03′ 45″ E.

(8) A white can buoy with three down turned brooms in lat. 55° 36′ 20″ N., lon. 8° 01′ 30″ E.

(9) A red light and whistle buoy exhibiting a flashing white light every 15 seconds in lat. 55° 35′ 19″ N., lon. 8° E.

(10) A red conical buoy with three upturned brooms in lat. 55° 34′ 20″ N., lon. 7° 57′ 36″ E.

(11) A red conical buoy with one upturned broom in lat. 55° 32′ 40″ N., lon. 7° 55′ 40″ E.

(12) A red and white horizontal striped light and whistle buoy exhibiting an occulting red light every 7 seconds in lat. 55° 31′ 24″ N., lon. 7° 56′ 06″ E. (Soren Bovbjergs Dyd Sud.)

(13) A red conical buoy with two upturned brooms in lat. 55° 31′ 18″ N., lon. 7° 57′ 34″ E.

(14) A green wreck buoy with two flags lying to the northeastward of the wreck in lat. 55° 30′ 55″ N., lon. 7° 58′ 17″ E.

(15) A red conical buoy with three upturned brooms in lat. 55° 30′ 31″ N., lon. 7° 59′ 03″ E.

(16) The Cancer Light and Whistle Buoy painted red, exhibiting a flashing white light every 15 seconds in lat. 55° 29′ 27″ N., lon. 8° 02′ 02″ E.

(17) A white can buoy with two down turned brooms in lat. 55° 32′ 10″ N., lon. 7° 56′ 45″ E.

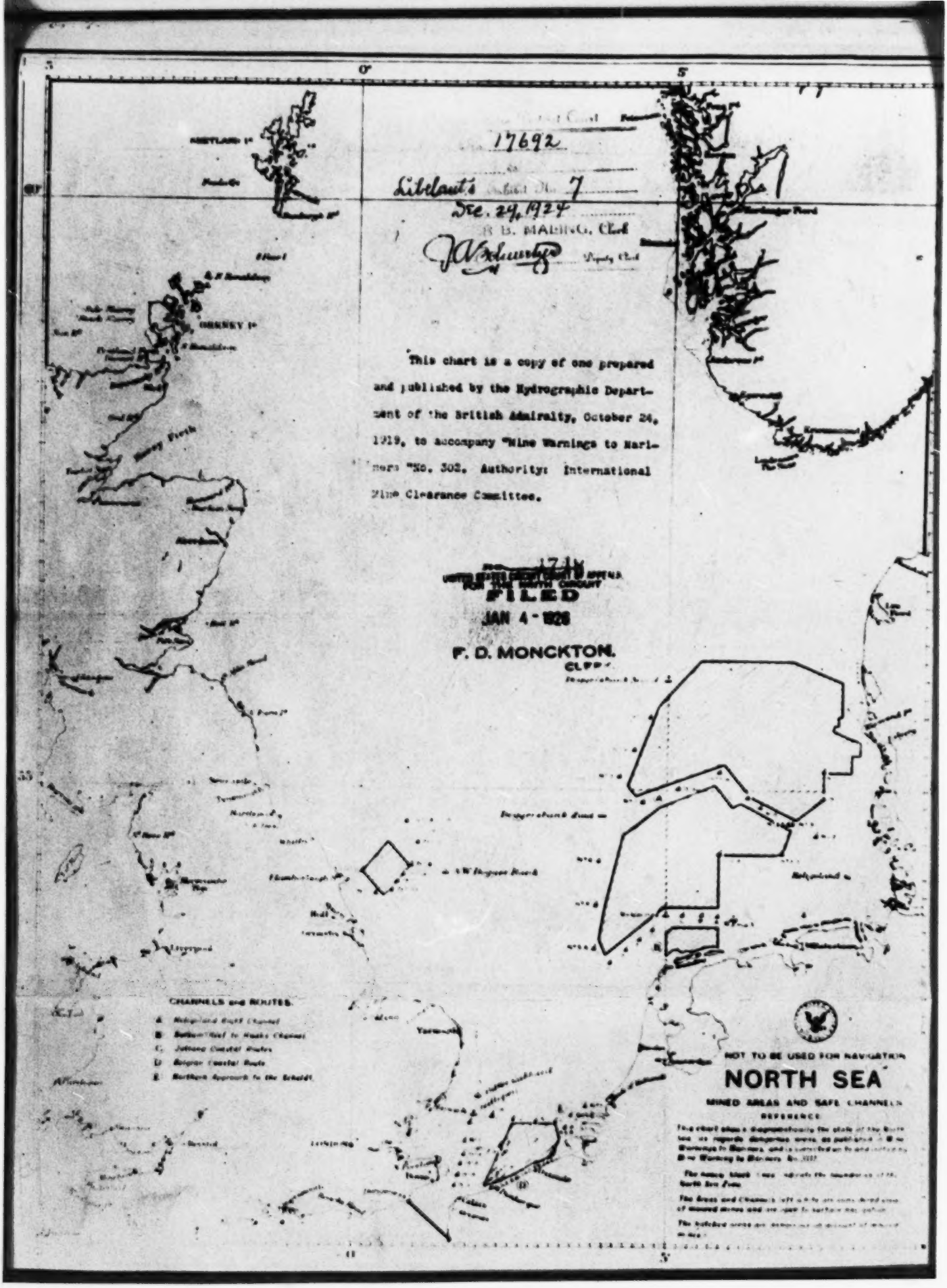
(18) A white can buoy with one down turned broom in lat. 55° 31′ 18″ N., lon. 7° 58′ 14″ E.

(19) A white can buoy with three down turned brooms in lat. 55° 30′ 48″ N., lon. 7° 59′ 30″ E.

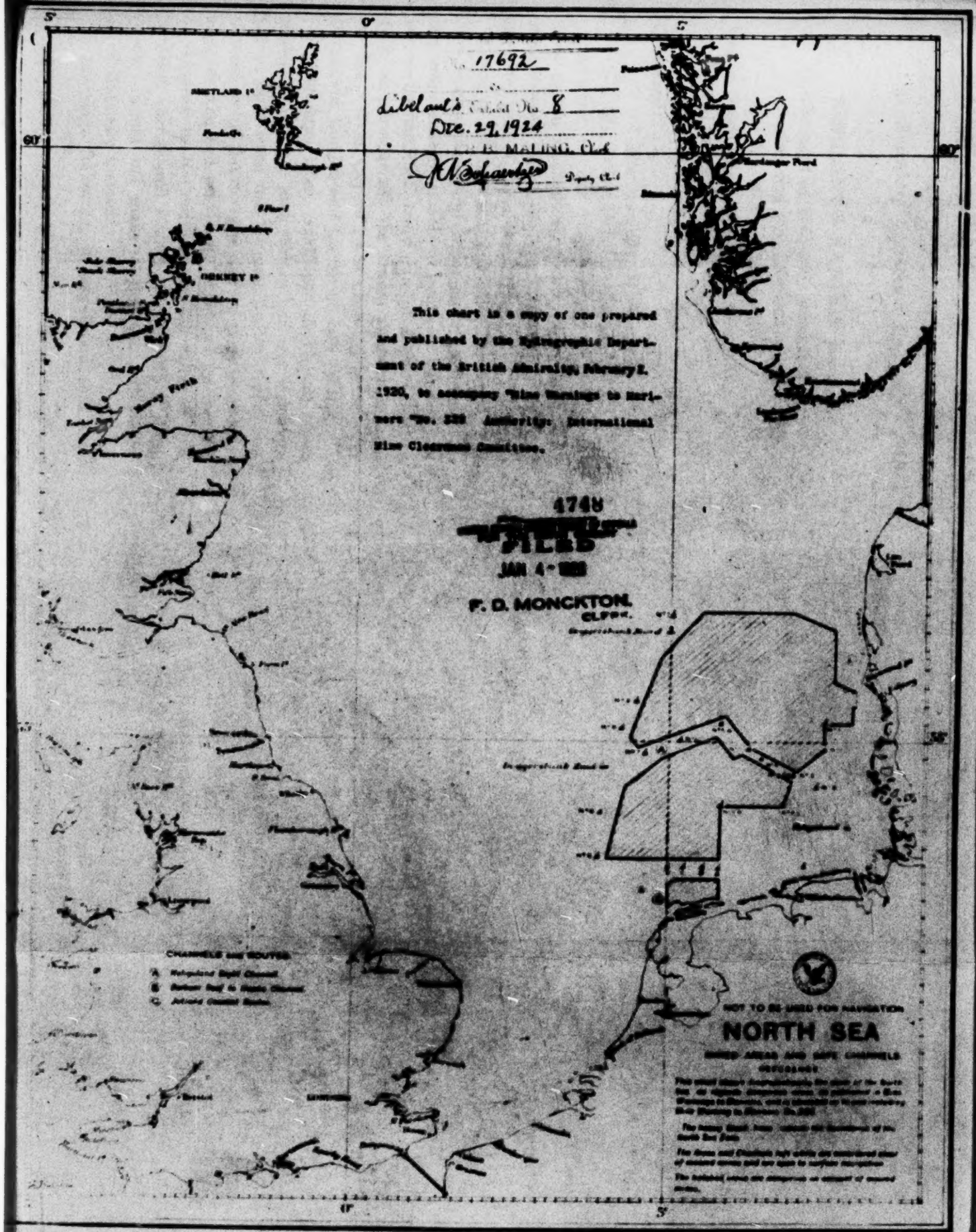
W. C. ASSERSON,
Captain, U. S. Navy,
Acting Hydrographer.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 6. Filed Dec. 29, 1924. Walter B. Maling. Clerk. By J. A. Shaertzer, Deputy Clerk. Mine Warnings to Mariners.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.


17692
Liblaut's
Dec. 29, 1927
R B. MARING, Chief
This chart is a copy of one prepared and published by the Hydrographic Department of the British Admiralty, October 24, 1919, to accompany "Mine Warnings to Mariners" No. 302. Authority: International Mine Clearance Committee.
FILED
JAN 4 - 1928
F. D. MONCKTON.
CLERK
CHANNELS and ROUTES
A
B
C
D
E
NOT TO BE USED FOR NAVIGATION
NORTH SEA
MINED AREAS AND SAFE CHANNELS
REFERENCE

Ex. 8.


17692
Libelant's Exhibit No 8
Dec. 29, 1924
J. B. McLING, Clerk
This chart is a copy of one prepared and published by the Hydrographic Department of the British Admiralty, February 2, 1920, to accompany "Mine Warnings to Mariners" No. 328 Admiralty International Mine Clearance Committee.
4748
FILED
JAN 4
F. D. MONCKTON
CLERK.
CHANNELS AND ROUTES
NOT TO BE USED FOR NAVIGATION
NORTH SEA

Washington, D.C. published Feb. 1920 at the Hydrographic Office under the authority of the SECRETARY OF THE NAVY

Supplement to the Pilot Chart of the North Atlantic Ocean

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LIBELANT'S EXHIBIT No. 9.

[Letter-head of Williams, Dimond & Co.]

San Francisco, February 24th, 1922.

No. 3000—FAH:O-187.

Messrs. Rosenberg Brothers and Company,
334 California Street,
San Francisco.

Gentlemen:

Attention, Mr. Higgins.
SS. "West Cayote" Voyage 51.

Referring to our conversation regarding the above-named steamer, on which reservations were made by you for shipment of 3,000 bags of Rice, the latter part of December, 1919.

Owing to the fact that our office has moved and been renovated several times since that date, we are, unfortunately, unable to locate all our records, but we do find that under date of December 16th, 1919, we circularized the trade, announcing that the SS. "West Cayote" was expected to sail for Rotterdam, London and Liverpool, late January.

A few days later, conditions developed which seemed to indicate that certain business which we had in sight when this steamer was originally announced would not develop, and we then telephoned shippers who had previously expressed an interest in shipping to Rotterdam, advising them of the proposed change and stating that the SS. "West Cayote" would not make Rotterdam, but would call at Hamburg instead.

A few days following, it was found that this

Rotterdam tonnage which was doubtful, had developed firm, and, therefore, the various interested shippers were again advised by telephone that the schedule as originally intended, would be adhered to.

Page No. 2

Futher search of our dock records brought to light the tissue copy of Permit No. 2660, which was issued at this officer on January 13th, 1920, upon your request, covering shipment of 3,000 100-pound bags of Rice, marked J H 371 Rotterdam, for forwarding on the SS. "West Cayote."

This shipment was covered by Shippers' Export Declaration No. 82819, as noted on this tissue copy of the Permit.

The shipment arrived at our Pier as follows—
Car R I 47219—600 sacks
Car Pennsylvania 25532—1000 sacks
By team delivery—850 sacks
By barge delivery—550 sacks

The delivery of these 3,000 sacks was completed at our dock on January 24th, 1920, receipted for by clerk Benjamin (Ben)

Following instructions received by you several days later, this lot of 3,000 sacks was reloaded by us at your expense in cars B & M 70448, B & O 171-813, C M & St P 70014, St L & S F 127487, and moved off the dock on February 3rd, 1920.

That information, you will note, is all contained on copy of Permit next attached.

Page No. 3

We also find from copies of telegrams in our files to our Coast Agents, that definite decision was made about January 8th or 9th to adhere to our schedule as announced in our circular letter of December 16th, 1919.

We might also state that at the time, no change was made in our advertisement in the "Guide," owing to the fact that the situation was changing every two or three days, and, therefore, the advertisement as originally placed was permitted to stand, and where any specific inquiries were made, shippers were verbally advised as to the several changes as they occurred from time to time.

Should you desire any further information in connection with this matter, we would be very pleased to hear from you.

Yours faithfully,

WILLIAMS, DIMOND & CO.,

Managing Agents.

F. A. HOOPER,

General Freight Agent.

enclosure

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 9. Filed Dec. 29, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

LIBELANT'S EXHIBIT No. 10.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 10. Filed Dec. 29, 1924. Walter B. Maling Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

Seattle-Tacoma, Wash. Tuesday November 25, 1919.

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 277

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE
(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday November 26 1919

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United States Shipping Board———Steel Steamers

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To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday November 28 1919

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Paper of all Transportation Companies and Shipping Interests of Puget Sound.

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EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Saturday November 29 1919

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EUROPEAN PACIFIC LINE
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United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10
(Shipping permits required)
To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Monday December 1 1919
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Thirty First Year of Publication VOLUME 31
No. 281

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers

From Seattle For

CARDIFF ROTTERDAM

S.S. WEST ALETA.....Dec. 10

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

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5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Tuesday, December 2 1919

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Thirty First Year of Publication VOLUME 31 No. 282

Entered at Seattle Postoffice as Second Class Mail Matter

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(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
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To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday December 3 1919
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Thirty First Year of Publication VOLUME 31
No. 283

Entered at Seattle Postoffice as Second Class Mail Matter

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United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & Co., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Thursday December 4 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31
No. 284

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday December 5 1919

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EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Monday December 8 1919
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(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

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Rates and space on application

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Seattle-Tacoma, Wash. Tuesday, December 9 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
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United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

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5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Wednesday December 10 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 289.

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EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS
5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Thursday December 11 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 290.

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EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday December 12 1919

THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.

Thirty First Year of Publication VOLUME 31 No. 291.

Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Saturday December 13 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 292.
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board——Steel Steamers
From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALETA.....Dec. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Monday December 15 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 293.
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers

From Seattle For

CARDIFF ROTTERDAM

S. S. WEST ALÆTA .....Dec. 18

(Shipping permits required)

To be followed by frequent sailings thereafter to various

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Rates and space on application

W. C. DAWSON & CO., AGENTS

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Tuesday December 16 1919

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From Seattle for

CARDIFF, ROTTERDAM, HAMBURG

S. S. WEST ALETA.....Dec. 18

LONDON, LIVERPOOL, ROTTERDAM

S. S. CAYOTTE.....Jan. 15

(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS.

5th floor Mutual Life Bldg Seattle Main 37

Seattle-Tacoma, Wash. Friday December 19 1919
THE DAILY INDEX Official Daily Shipping Paper of all Transportation Companies and Shipping Interests of Puget Sound.
Thirty First Year of Publication VOLUME 31 No. 297
Entered at Seattle Postoffice as Second Class Mail Matter

EUROPEAN PACIFIC LINE

(Freight only)

United States Shipping Board———Steel Steamers
From Seattle for

CARDIFF, ROTTERDAM, HAMBURG

S. S. WEST ALETA.....Dec. 19

LONDON, LIVERPOOL, ROTTERDAM

S. S. CAYOTE.....Jan. 15

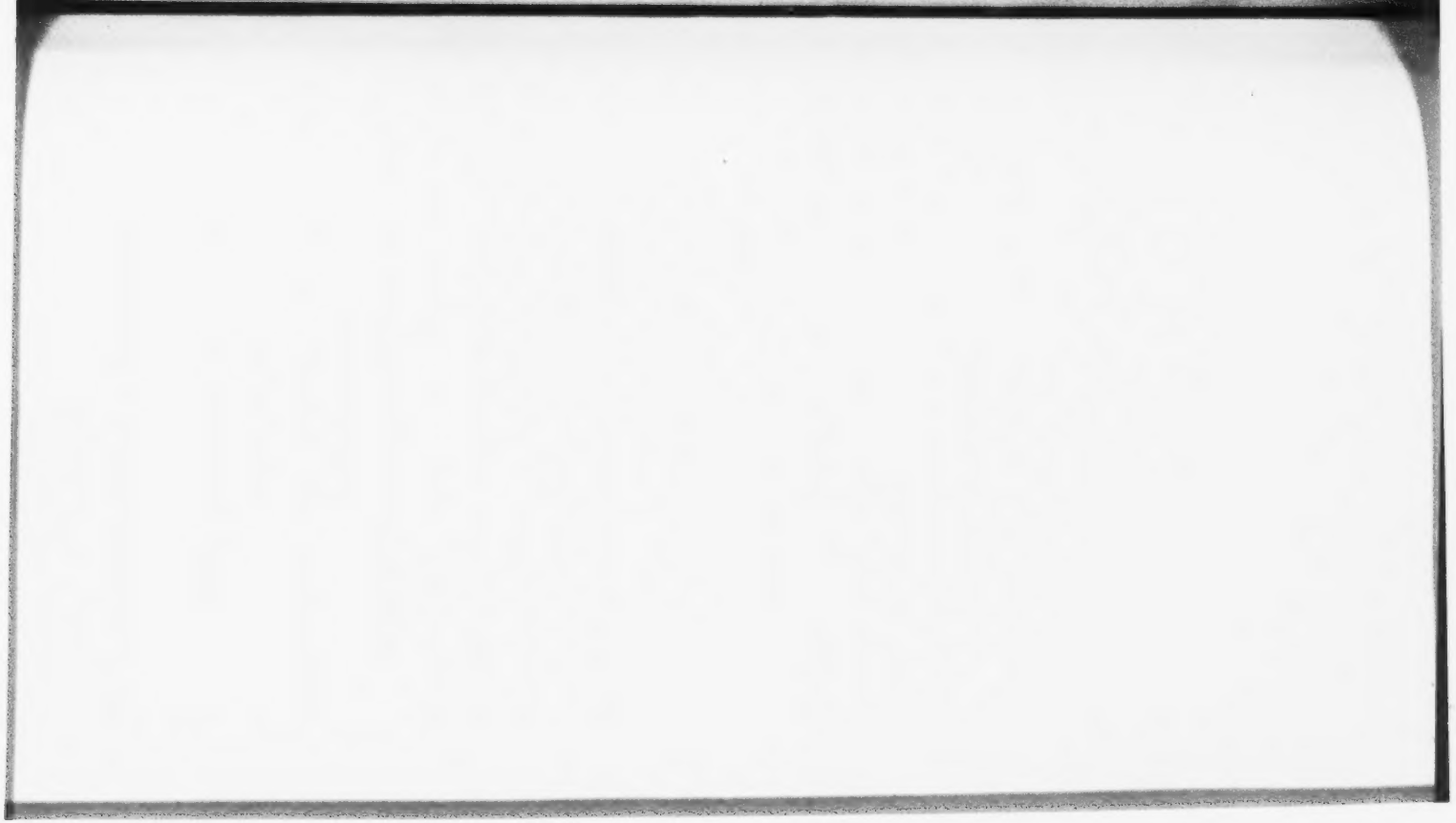
(Shipping permits required)

To be followed by frequent sailings thereafter to various

EUROPEAN PORTS

Rates and space on application

W. C. DAWSON & CO., AGENTS.
5th floor Mutual Life Bldg Seattle Main 37



LIBELANT'S EXHIBIT NO. 11

CHINA MAIL STEAMSHIP COMPANY. LTD.

Akfld fm	1 S	12/7/19	London
Effingham	1 S	12/7/19	1 Hav - 1 Ldn - 1 Pl
Westbrook		9/7/19	1 Hamb London
Westkaten		10/21/19	1 Hamb London
Lockpoint		12/28/19	1 Hamb, Antwerp, Rhenish
Connemara		8/29/19	1 Pool
Orwell		11/18/19	Bristol 1 Pool London
Elbeck		9/6/19	1 Pl 1 Ldn
Crania		10/29/19	1 Ldn 1 Pl Glasgow
Colonia		7/29/19	Hull
Westbeta		8/10/19	Hull Hamburg
Waikanna		2/29/19	Falmouth Danzig
			Hamburg Rotterdam Pool

[Endorsed]:

No. 17692

Libelant's 11.

Dec. 30, 1924

E. B. MALING, Clk

By J. V. Schaudy Deputy Clk

No. 4748

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

JAN 4 - 1926

F. D. MONCKTON, CLERK

28

LIBELANT'S EXHIBIT No. 12.

[Letter-head of Williams, Dimond & Co.]

Nov. 27, 1919.

San Francisco, November 25th, 1919.

No. 500–EO.

California Wine Association,
216 Pine Street,
San Francisco.

Gentlemen:

SS. "West Aleta."

This will confirm reservation of space for your account covering shipment of 10,000 barrels of Wine to be forwarded from here to Cardiff on the above named steamer.

This will also confirm reservation of space for your account covering shipment of 4,000 barrels of wine to be [In pencil: added 100 Brls. 11/26/19.] forwarded from here to Rotterdam on the above named steamer.

The rate on Wine, in barrels, is $2.10 per 100 lbs., applying from ship's side San Francisco to ship's side Cardiff, and $2.35 per 100 lbs., applying from ship's side San Francisco to ship's side Rotterdam.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,
WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER, O.,
General Freight Agent.

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 12. Filed Dec. 30, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

FORM 1 P-01 M

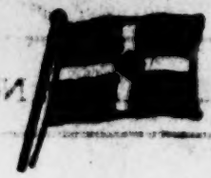
ISTHMIAN STEAMSHIP LINES

PACIFIC-UNITED KINGDOM SERVICE VIA PANAMA CANAL

VANCOUVER, B. C., SEATTLE, PORTLAND, SAN FRANCISCO, LOS ANGELES HARBOR, SAN DIEGO, ETC., TO UNITED KINGDOM PORTS

PACIFIC COAST

ATLANTIC COAST



Received at San Francisco,

1. The shipment may substitute or transfer the whole or any part of the cargo to other vessels, whether operated by the proprietors of the vessels named herein or otherwise, and may forward the goods by other routes than that specified in the bill of lading, in case of accident, delay, or obstruction of any kind, whether existing at the time of shipment or arising during the voyage, and may discharge the goods at any port or place which the vessel may reach, and there store the goods at the risk and expense of the owners of the goods, and such storage shall be equivalent to delivery to the consignee. The vessel may call at any port or ports, whether in or out of the regular course of the voyage, and may sail with or without pilots, and may tow or assist vessels in all situations, and the exemption from liability and the rights and privileges of the vessel shall apply to each and all of the navigation of the vessel, whether connected with the immediate object of the voyage or not. The vessel may carry contraband, explosives, or dangerous goods, and may deviate for the purpose of saving life or property.

2. The shipowner shall not be liable in any capacity for loss, damage, or delay, whether occurring before, during or after loading, transit, transhipment, discharge, delivery or other disposition of the goods, arising from any of the following causes, whatsoever and howsoever occurring: The act of God, perils or accidents of the sea or other waters, and of navigation; unseaworthiness of the shipowner's vessel; collision, stranding, perils or wrecks; fire from any cause or howsoever occurring, on board, in dock or on shore; fault or bursting of the master or other servants of the shipowner; enemies, pirates, robbers, theft by any person whether in the employ of the shipowner or not; arrests or restraints, capture, seizure, detention, interference of any sort, or any act of interference, purporting to be done by any person or persons in authority, whether on land or at sea, whether done with or without any semblance of right; riots, civil commotions, revolutions, insurrections, strikes, lockouts, stoppages of labor or labor troubles of the shipowner's employees or others; shortage or lack of coal, oil, provisions, crew or facilities of any sort, accumulation of cargo; explosion, bursting of boilers; steam, breakage, accidents or derangement of shafting or machinery or appurtenances; unseaworthiness and/or latent or other defect in any part of the hull, boilers, engines, machinery or appurtenances of the vessel, even though existing at the time of shipment or at the commencement of the voyage, provided the shipowner shall have exercised due diligence to make the vessel reasonably seaworthy; heat, frost, dew, rain, storm, cyclone, earthquake, perils of the sea, floods, freshets, ice, hail, lightning, mist, fog, steam pipes or steam or other smothering or injurious effects of fire, heat or steam; decomposition, evaporation, contact with other cargoes, leakage, breakage, denting, bruising, chafing, rusting, rotting, mildew, deterioration, shrinkage, injury from vermin, inherent vice, insufficiency of packing, inadequacy of marks, wastage in bulk or weight, decay, putrefaction, rats, corrosion, contact with oil, acids, lime, or spray, stains, odors of other goods, change of character, change, leakage, shortage, chafing, evaporation, corrosion, explosion or bursting of boilers; explosion of any goods whether shipped with or without disclosure of their nature; insufficiency of package, improperly or defectively packed, addressed or described marks, numbers, addresses or descriptions; injury to or sinking of wrappers or packages, injury from hooks, hoisting, transhipment or by trans and risk of craft and storage thereon; protrusions, or delay of the voyage; giving away, jettison or destruction of wheat, skin or warehouse.

3. General average shall be payable in New York Funds according to York-Antwerp Rules and as to matters not therein provided for, according to the laws and usages of the port of New York. The general average in every instance shall be prepared by average adjusters selected by the shipowner. If the shipowner shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, in case of damage or disaster, resulting from accident or from faults or errors in navigation or in management of such vessel, caused or happening in the vessel, her machinery or appurtenances, from unseaworthiness, even though existing at the time of shipment or at the commencement of the voyage, if the defect or unseaworthiness was not discoverable by the exercise of due diligence, the shipper, consignee or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo and shall contribute with the shipowners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure of any common peril, all in the same manner and to the same extent as if such accident, cause, damage, or disaster had not resulted from or been occasioned by faults, errors in navigation, or in the management of the vessel, or by any latent or other defect or unseaworthiness. Salvage services rendered to the goods by vessels owned by or in the service of the shipowner shall be paid for as fully as if such vessels were owned by strangers.

4. The shipper, owner, consignee and holder of the bill of lading, shall be liable for and bound to indemnify the shipowner or others against all expenses, liabilities, damages, losses or claims arising from or in connection with dangerous or inflammable goods shipped without full disclosure of their nature, whether such shipping be known to the shipowner or his agents or not, and for all goods sacrificed, jettisoned or destroyed, and for all damages or accidents caused to the vessel or other property by such goods, and the goods may be discharged, destroyed or rendered innocuous by the shipowner without compensation and without liability on account thereof, except to general average when properly incurred. Any compensation earned by the vessel in rescuing or assisting vessels or goods in distress, and any port charges incurred in connection therewith, shall be general average. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from boilers, machinery or steam being used for the purpose of discharging coal or for any purpose connected therewith, unless such loss, damage or delay is caused by the want of ordinary care on the part of the shipowner in relation to the vessel's boilers, machinery or steam. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from overcarriage of the goods beyond the ports or places named in the bill of lading, or for any loss of or damage to the goods or delay in delivering them, arising from the carriage of the goods on deck, and the goods carried on deck may be jettisoned without compensation.

5. The shipowner shall not be liable for any breach of contract with respect to the goods caused either wholly or in part by compliance with any order or recommendation of any government department or any person acting or purporting to act on behalf of any government department or any person having under the terms of insurance on the vessel the right to give such order or recommendation, whether such order or recommendation be right or wrong or within the powers of the person giving it or not, provided that a reasonable excuse for so acting is put forward at the time. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from any cause whatsoever, whether like or unlike any of the matters enumerated in this bill of lading, which is not due to the actual fault or privity of the shipowner, or to the fault or privity of the agents or servants of the shipowner with respect to the goods, and proof thereof shall be on the shipowner or his agents.

6. During transhipment or forwarding of goods shall be at the risk of the shipper, owner or consignee and shall be subject to the conditions of this bill of lading, but the responsibility of the shipowner for any loss of or damage to the goods shall cease on the delivery of the goods to the next carrier or bailee, and the shipowner shall not be liable for any loss of or damage to the goods occurring after the delivery of the goods by the carrier carrying on the vessel. The goods may be stored during transhipment and/or forwarding, if necessary, at any place at the risk of the owner of the goods. The risk and expense of warehousing or storage upon the wharf or elsewhere shall be borne by the owner of the goods. The shipowner in making arrangements with the carrier for the transhipment and/or forwarding of the goods shall be entitled to act as the agent of the shipper, owner or consignee of the goods and not the agent of the carrier employed by the shipowner. The shipowner shall not be liable in respect whatsoever for any loss, damage or delay which may occur to the goods after they have been taken out of the vessel at the port of discharge or transhipment, even if the goods are lost or destroyed before the vessel has left the port, or if the vessel is unable or shall have been prevented from entering the port of destination. The shipowner shall have a lien on the goods for the carriage thereof to the port of destination and for all expenses incurred in respect of the goods by the carrier, continuance of the transit and the delivery of the goods, and the shipowner shall have the right to sell the goods to cover the amount due, and the proceeds of the sale shall be applied in payment of the freight, charges and expenses incurred in respect of the goods, and the surplus, if any, shall be paid to the owner of the goods. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from the carriage of the goods on deck, and the goods carried on deck may be jettisoned without compensation and without liability on account thereof, except to general average when properly incurred. Any compensation earned by the vessel in rescuing or assisting vessels or goods in distress, and any port charges incurred in connection therewith, shall be general average. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from boilers, machinery or steam being used for the purpose of discharging coal or for any purpose connected therewith, unless such loss, damage or delay is caused by the want of ordinary care on the part of the shipowner in relation to the vessel's boilers, machinery or steam. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from overcarriage of the goods beyond the ports or places named in the bill of lading, or for any loss of or damage to the goods or delay in delivering them, arising from the carriage of the goods on deck, and the goods carried on deck may be jettisoned without compensation and without liability on account thereof, except to general average when properly incurred. Any compensation earned by the vessel in rescuing or assisting vessels or goods in distress, and any port charges incurred in connection therewith, shall be general average.

7. In case of quarantine, sanitation or medical inspection, fire, ice, breakage, dock congestion, closing or blockading of port, canals, locks, or waterways, strikes, lockouts, stoppages or labor troubles of any description whatsoever, whether of employees of the shipowner or others, or any other cause preventing, hindering or delaying the working of the vessel or her discharging or loading, or the transhipment, forwarding or delivery of the goods at any port or place at which the vessel may call in the course of the voyage, or the beginning of the voyage, or the commencement of or during the voyage, the shipowner may, at his option, discharge the goods or any part of them at any port or place at which the vessel may call or enter in the course of the voyage, whether such port or place be the port or place of discharge named herein or not, and whether the goods are discharged or not, the responsibility of the shipowner shall cease, and the goods may be stored at the risk and expense of the owner of the goods, or forwarded to the port of discharge named herein at the option of the shipowner, and the freight shall be payable on the goods and the cost of the transhipment and storage shall be borne by the goods. If goods for more than one consignee are loaded on board, the shipowner may discharge at one consignee, and proceed to the next consignee, and so on, and the goods may be stored at the risk and expense of the consignees respectively. The shipowner shall have a lien on the goods for all expenses incurred in connection with the goods, and may sell the goods to cover the amount due, and the proceeds of the sale shall be applied in payment of the freight, charges and expenses incurred in respect of the goods, and the surplus, if any, shall be paid to the owner of the goods. If the vessel is prevented from entering the port of destination named herein by reason of any of the causes mentioned in this clause, the shipowner may, at his option, discharge the goods at any port or place at which the vessel may call or enter in the course of the voyage, whether such port or place be the port or place of discharge named herein or not, and whether the goods are discharged or not, the responsibility of the shipowner shall cease, and the goods may be stored at the risk and expense of the owner of the goods, or forwarded to the port of discharge named herein at the option of the shipowner, and the freight shall be payable on the goods and the cost of the transhipment and storage shall be borne by the goods. If goods for more than one consignee are loaded on board, the shipowner may discharge at one consignee, and proceed to the next consignee, and so on, and the goods may be stored at the risk and expense of the consignees respectively. The shipowner shall have a lien on the goods for all expenses incurred in connection with the goods, and may sell the goods to cover the amount due, and the proceeds of the sale shall be applied in payment of the freight, charges and expenses incurred in respect of the goods, and the surplus, if any, shall be paid to the owner of the goods. If the vessel is prevented from entering the port of destination named herein by reason of any of the causes mentioned in this clause, the shipowner may, at his option, discharge the goods at any port or place at which the vessel may call or enter in the course of the voyage, whether such port or place be the port or place of discharge named herein or not, and whether the goods are discharged or not, the responsibility of the shipowner shall cease, and the goods may be stored at the risk and expense of the owner of the goods, or forwarded to the port of discharge named herein at the option of the shipowner, and the freight shall be payable on the goods and the cost of the transhipment and storage shall be borne by the goods. If goods for more than one consignee are loaded on board, the shipowner may discharge at one consignee, and proceed to the next consignee, and so on, and the goods may be stored at the risk and expense of the consignees respectively. The shipowner shall have a lien on the goods for all expenses incurred in connection with the goods, and may sell the goods to cover the amount due, and the proceeds of the sale shall be applied in payment of the freight, charges and expenses incurred in respect of the goods, and the surplus, if any, shall be paid to the owner of the goods.

8. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them arising from any cause whatsoever, whether like or unlike any of the matters enumerated in this bill of lading, which is not due to the actual fault or privity of the shipowner, or to the fault or privity of the agents or servants of the shipowner with respect to the goods, and proof thereof shall be on the shipowner or his agents.

9. During transhipment or forwarding of goods shall be at the risk of the shipper, owner or consignee and shall be subject to the conditions of this bill of lading, but the responsibility of the shipowner for any loss of or damage to the goods shall cease on the delivery of the goods to the next carrier or bailee, and the shipowner shall not be liable for any loss of or damage to the goods occurring after the delivery of the goods by the carrier carrying on the vessel. The goods may be stored during transhipment and/or forwarding, if necessary, at any place at the risk of the owner of the goods. The risk and expense of warehousing or storage upon the wharf or elsewhere shall be borne by the owner of the goods. The shipowner in making arrangements with the carrier for the transhipment and/or forwarding of the goods shall be entitled to act as the agent of the shipper, owner or consignee of the goods and not the agent of the carrier employed by the shipowner. The shipowner shall not be liable in respect whatsoever for any loss, damage or delay which may occur to the goods after they have been taken out of the vessel at the port of discharge or transhipment, even if the goods are lost or destroyed before the vessel has left the port, or if the vessel is unable or shall have been prevented from entering the port of destination. The shipowner shall have a lien on the goods for the carriage thereof to the port of destination and for all expenses incurred in respect of the goods by the carrier, continuance of the transit and the delivery of the goods, and the shipowner shall have the right to sell the goods to cover the amount due, and the proceeds of the sale shall be applied in payment of the freight, charges and expenses incurred in respect of the goods, and the surplus, if any, shall be paid to the owner of the goods. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from boilers, machinery or steam being used for the purpose of discharging coal or for any purpose connected therewith, unless such loss, damage or delay is caused by the want of ordinary care on the part of the shipowner in relation to the vessel's boilers, machinery or steam. The shipowner shall not be liable for any loss of or damage to the goods or delay in delivering them, arising from overcarriage of the goods beyond the ports or places named in the bill of lading, or for any loss of or damage to the goods or delay in delivering them, arising from the carriage of the goods on deck, and the goods carried on deck may be jettisoned without compensation and without liability on account thereof, except to general average when properly incurred. Any compensation earned by the vessel in rescuing or assisting vessels or goods in distress, and any port charges incurred in connection therewith, shall be general average.

10. The goods shall be liable for all expenses of carefully discharging, warehousing and preserving of later cargo and contents of the warehouse, and for any handling, storage, etc., on account of whomsoever owned incurred at the discretion of the shipowner in the interest of preservation of the goods or the vessel, and for all liabilities of the shipowner in connection with the goods, and for all claims against the shipowner in connection with the goods, and for all fines and penalties incurred by any reason of the goods, and for all damages and expenses arising out of the detention of the vessel by any persons, firm, corporation, body, company or government, and for all damages and expenses arising out of the delivering of packages or descriptions of goods other than those specified in the bill of lading, or delivering of goods without production of the bill of lading, or the failure to deliver the goods to the consignee named in the bill of lading, or the failure to deliver the goods to the consignee, or to the order of the holder of the bill of lading, or to the order of the consignee, or to the order of the holder of the bill of lading, or to the order of the consignee, or to the order of the holder of the bill of lading, or to the order of

CONTINUED FROM OVER PAGE

BILL OF LADING NO.

Eastbound S. S. ..... **Voy. No.** ..... **Port of Discharge** .....

SHIPPER .....

CONSIGNEE: ORDER .....
(Mail Address—for Purposes of Delivery)

NOTIFY (if consigned to "Order") .....

SHIPPER'S DESCRIPTION OF GOODS

MARKS AND NUMBERS	NUMBER OF PACKAGES	KIND OF PACKAGE	CONTENTS PACKAGES SAID TO CONTAIN	SHIPPER'S GROSS WEIGHT IN POUNDS	RATE	FREIGHT AND CHARGES

United States District Court
No. 17692

Libelant's Exhibit No. 13
Dec. 21, 1934
WALTER B. MALING, Clerk
By ..... Deputy Clerk

4748
FILED
JAN 4 - 1935
F. D. MONCKTON,
CLERK.

OCEAN FREIGHT

All previous contracts or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its stipulations, exceptions and conditions, whether written, stamped or printed are accepted and agreed by the shipper, owner, consignee or holder to be binding by them so fully as if signed by them, any local customs or privileges to the contrary notwithstanding. If required by the shipowner, one signed bill of lading duly endorsed must be surrendered to the agent of the vessel, at the port of discharge in exchange for delivery order.

IN WITNESS WHEREOF, the shipowner, by its agents has signed .....Bills of Lading, all of this tenor and date, and if one is accomplished, the others shall be void.

DATED AT SAN FRANCISCO this ..... day of ..... 192....

STATE TOLLS

Advance Charges .....

Inland Freight .....

Cartage .....

Insurance .....

Total $ .....

FOR THE ISTHMIAN STEAMSHIP LINES

B/L No.

NORTH PACIFIC COAST LINE

Joint Service of

Holland-America Line
AND
The Royal Mail Steam Packet Company

DIRECT LINE OF SHIPS
BETWEEN
NORTH PACIFIC COAST PORTS
AND
UNITED KINGDOM & CONTINENTAL PORTS

SHIPPED in apparent good order and condition by.....
on board the ship "....." belonging to or employed by the Holland-America Line or the Royal Mail Steam Packet Co. (hereinafter called the Carriers) now lying in or off the port of.....
the goods or packages of merchandise stated to be marked, numbered and described as below:

Marks

No. 17692

Libelant's Exhibit No. 14
Dec. 31, 1924

No. 4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON,
CLERK

NOTIFY

lbs. Gross Weight

Freight	*at*	*per*	$
		Toll Charges	$
		Charges	$
		Total	$

to be conveyed and delivered to.....
or his or their assigns at..... (hereinafter called the Port of Destination)
under and subject to the conditions and exceptions herein expressed.

The following are the conditions and exceptions above referred to:—

1. METHOD OF CONVEYANCE.—The Carriers to be at liberty to carry the said goods to the port of destination by the above-named ship or by any other vessel or craft either belonging to or employed by the Carriers or belonging to persons proceeding either directly or indirectly to such port and the goods or any portion thereof may at any stage of the voyage be transhipped, or landed stored and reshipped, all risks attending transhipment, landing, stories and/or reshipment being borne by the owners of the goods. The Carriers do not guarantee room on vessels at ports of transhipment and will not be responsible for delay or detention there however caused, and any supplementary expenses, dues, duties, charges occasioned by the transhipment or landing of goods shall be borne by the owners thereof. If the carriage of the goods is performed or partly performed by any other vessel or craft than the above named ship, whether belonging to the Carriers or to other owners or agents, all the conditions, liberties and exceptions herein contained shall apply in such other vessel or craft, and to the owners thereof and their agents or servants as well as to the Carriers in respect of such carriage.

2. DEVIATION.—The said Ship or any other vessel employed in any part of the transport shall be at liberty to deviate, or anticipate her advertised sailing date either before or after proceeding towards the Port of destination, to proceed to and call at any ports or places whatsoever (although in a contrary direction to or out of or beyond the above-named route to the Port of destination) once or oftener in any order and for any purpose whatsoever, and in all such ports, places and sailings shall be deemed to be included within the intended voyage and to call, wait or proceed there, to have liberty to swing or manoeuvre, to tranship passengers or be removed from one berth to another or to dry docked with cargo on board whether prior to the commencement of, after the termination of or at any stage of the voyage; to carry goods on deck; to carry goods of all kinds, dangerous or otherwise; to deviate in any manner and for any purpose whatever, any warranty or rule of Law to the contrary notwithstanding; to transship or land and reship by lighter or otherwise at port of shipment or at any other port or ports into any other ship or conveyance; to tow or to be towed, and to assist vessels in all situations. All the liabilities, conditions and exceptions of this Bill of Lading shall apply to any carrying vessel (any customs or rule of law notwithstanding) although the vessel may have deviated from the ordinary voyage or customary or intended ports of voyage and although such deviation may amount to change or abandonment of the voyage and notwithstanding unseaworthiness or unfitness of the vessel at the commencement of or at any period of the voyage.

3. EXCLUSIONS.—The Carriers will not be responsible for loss, damage, injury or other consequences occasioned by or arising directly or indirectly from any of the following causes, perils or others, namely:—The Act of God, the King's Enemies or Pirates; arrest or restraint of Princes, Rulers or Peoples; capture or seizure; Claims of Third Parties, Customs Laws of Foreign Countries; Barratry of Masters or Mariners; Robbery, Theft, or pilferage, whether on board or on land, and whether by persons directly or indirectly in the employ of the Carriers or otherwise; Jettison; Fire or explosion however caused and whatever occurring, whether on land or on water; Stranding; Collision with any vessel or substance belonging either to the Carriers or any other person or persons; Heeling over, upsetting, sinking or foundering of the vessel or any craft, either at sea or in harbour, River or Canal; All and every dangers, perils or accidents of the Seas, Rivers, Canals or other waters, and of navigation of whatsoever kind or kind however; Accidents of any kind howsoever, leakage or wetting, breakage, Land transit or carriage whether the same be caused by defects in the apparatus or roads, or means of transport employed or otherwise; Fumigation or by any other act of sanitary authorities, whether in the ship's hold, in lighter, hulk, craft or on shore; Admission of water into the vessel by any cause, whether accidental or for the purpose of extinguishing fire or for any other purpose; Effects of climate, exposure to weather, heat of holds; Vermin, rust, steam, smoke, coal dust or other oil, heat or evaporation, damage to boilers, steam machinery or injury from boilers; Improper or defective storage, leakage, wastage, breakage (however caused), decay, heating, sweating, contact with, or taint from other goods or for or on account; Injury occasioned by acts of inflammable persons for whose actions the Carriers are not responsible; Insufficiency, Riots, strikes, combinations of workmen, lockouts, labour disturbances, lock-outs, and trade disputes of any kind (whether the Carriers be party thereto or not), or stoppage or shortage of labour from whatever cause; Accidents to or failure, breakdown or defects in hull, boilers, shafts, machinery, tackle, wireless telegraphy installation, refrigerating chambers or engines or material employed therein, pumps, pipes, decks, valves or other appurtenances; Unfitness or insecurity of any Building Berth, hold or hulk of any hulk, warehouse or store; Any act, omission, error of judgment, mistake, neglect or default whatsoever of the Master, Officers, Mariners, Engineers or other servants or Agents of the Carriers, or of Pilots, Stevedores or other persons employed by the Carriers or their Agents; or unseaworthiness of the vessel either at the commencement of or at any stage of the voyage provided all reasonable means have been taken by the Carriers to provide against such unseaworthiness nor for any loss of or damage to any goods however caused which is capable of being covered by insurance.

4. DESCRIPTION OF CARGO.—The weight, Measurement, Contents, Marks, Quantity, Brand, Gauge, condition and value of the goods or packages are unknown to the Carriers, and the Carriers are not responsible for or bound by the description and particulars as given, or answerable for any discrepancy between the actual marks and numbers on the packages and those denoted as above. Packages also to other goods however, resulting from wrong declaration of weight, value or contents to be paid by Shippers and/or Receivers of the goods, and the Carriers not to be responsible for loss or damage resulting from incorrect marking of the packages.

5. RESPONSIBILITY FOR PACKAGES.—Each package must be distinctly marked before shipment with the Marks and numbers, and with the Port of Destination in letters of at least two inches in length, otherwise the Carriers will not be responsible for loss, detention or non-delivery thereof. The Carriers will also not be responsible for any loss, damage, delay, detention or non-delivery of packages resulting from insufficient packing, injury to wrappers, inscriptions, obscurity, inconspicuousness or obliteration of marks or addresses, or from incorrect description of contents, weight or value of any package in any document or upon such package. All expenses, damage or loss incurred by the Carriers, including loss by delay or detention of the Vessel, and any duty, fine or impost whatsoever levied upon the vessel or imposed upon the Carriers on account of or in connection with the goods, whether by reason of incorrect or insufficient marking of packages or description of their contents, or the omission of any particular by the contention at any part of transhipment or at the port of destination, or the failure to provide any document or to send any other requirement of such authorities, or by ignorance of the nature of the goods, or otherwise however shall be paid by the Shippers or consignees as may be required, and the Carriers shall have a lien upon the goods obtainable by sale thereof for the recovery of any such amount paid or expenses incurred. Apportionment by the Carriers' Agents of packages which cannot be identified or the contents of which cannot be ascertained of goods of the same description from which packages are missing shall free the Carriers of all liability, and no claim shall arise from alleged inferiority of quality or condition of the goods delivered. If various shipments in bulk are stowed together each therefore shall bear his proportion of loss and/or damage, if any. The Carriers will not be responsible for shortage of slack, grain, pea, and similar articles in single bags, or shortage of contents from cases not covered by bona fide leaks or safety clasps. Any bags of grain, coffee canvas or similar bags to landed short or torn, the Consignee shall accept such proportion of the consignee as shall be allowed by the Agents of the Carriers, and the same shall be deemed a full settlement of any claim for loss in weight. All outlays for coverage or repairs to packages or bailing or re-bailing, or washing or re-washing of goods, incurred by the Carriers, shall be repaid to the Carriers by the Shipper, and the Carriers shall have a lien for such charges upon all goods of the shipper in respect of whose goods such expenses were incurred.

(For Continuation of Conditions, see Back.)

In Witness whereof the Master or Agents of the said Ship and its connections have affirmed to..... Bills of Lading, each of this tenor and date, one of which Bills being accomplished, the others to stand void.

Dated in..... this..... day of .....

For Holland-America Line.
The Royal Mail Steam Packet Company.

HARRISON DIRECT LINE

HOMEWARD SERVICE FROM NORTH PACIFIC PORTS

BALFOUR, GUTHRIE & CO., AGENTS

No. 4748

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON
CLERK

SHIPPED, by (or received for shipment from).....

in apparent good order and condition, to be transported by the Steamship.....

from the Port of.....or if shipment is whole or in part on board the aforesaid ship conveniently for loading to the Port thereof by said steamship or substituted steamer, either before or after proceeding towards the port of destination above named or beyond it or from and stay at any ports or places whatsoever, including any in a contrary direction to, or out of, or beyond the route named, and/or otherwise, in any order backwards or forwards, for the purpose of trading or for any purpose whatsoever, and there or thereabouts to be delivered alongside or as near thereto as she may safely get always afloat, or if prevented from any cause from at carrier's option for shipment on board another steamer or steamers, whether of the same company as aforesaid or not, and stay at any ports or places whatsoever, including any in a contrary direction to, or out of, or beyond the route named, and/or otherwise, in any order backwards or forwards, for the purpose of trading or for any purpose whatsoever, and there or thereabouts to be delivered alongside or as near thereto as she may safely get always afloat, the following goods or packages, which are to be carried under deck without liability for fire, but the Carrier shall be responsible for the extra risk of fire, if any, caused by the use of steam in the loading or discharging of the goods, and which are to be delivered in the like good order and condition at the aforesaid Port of discharge (the act of God, the Queen's enemies, fire, explosion, accidents of navigation, collision, stranding, barratry of the master or crew, and all and every other dangers and accidents of the seas, rivers and steam navigation, of whatever nature or kind soever, excepted), unto order or to his or their assigns, he or they paying freight for the said goods according to the Rates and Conditions of the Carrier's Tariff in force at the time of shipment, with primage and average accustomed. Dangerous goods to be permitted only by consent and to be stowed to the satisfaction of the Master. Owners not responsible for shortage, unless notified before discharge of ship. Owners not responsible for glass, unless broken to the knowledge of the Master before shipment. Owners not responsible for any claim unless notice of loss be given before the goods are removed from the ship or from the craft in which they are delivered. Owners not responsible for any claim unless suit be brought within one year after the delivery of the goods or the date when the goods should have been delivered. Owners not responsible for any claim unless suit be brought within one year after the delivery of the goods or the date when the goods should have been delivered. Owners not responsible for any claim unless suit be brought within one year after the delivery of the goods or the date when the goods should have been delivered.

MARKS AND NUMBERS	
	Filed in the United States Circuit Court of Appeals
	No. 4748
	Libelants Exhibit No. 15
	Dec. 31, 1924
	F. D. MALING, Clerk
	By [illegible] Deputy Clerk

If and so long as the ship is insured against war risks with a war risks insurance association under or in connection with a war risks insurance scheme of his Majesty's government, the ship in addition to any liberties expressed or implied in this bill of lading shall have the liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages or otherwise howsoever, given by his Majesty's government, or any department thereof, or any person acting or purporting to act with the authority of his Majesty, or of his Majesty's government, or of any department thereof, or by any committee or person, having under the terms of the war risks insurance on the ship the right to give such orders or directions, and nothing done or not done by reason of any such orders or directions shall be deemed a deviation.

Freight..... Tons @..... £.....

2240

.....Cubic Feet @..... £.....

.....Feet B. M. @..... £.....

..... @..... £.....

being marked and numbered as above (quality, brand, contents, internal condition, weight and value unknown) and to be delivered over ship's side, where ship's responsibility shall cease, in like good order and condition, at the Port of.....

.....(or as near thereto as she may safely get always afloat) unto

ORDER.....

or to his or their assigns, he or they paying freight, in cash, on the arrival of said goods at the port of discharge, in exchange for delivery order, without any allowance of credit or discount, in the United Kingdom; or at current exchange for bankers' bills on London at eight day's sight, if at a port on the Continent of Europe, notwithstanding all customs and regulations of the port of discharge to the contrary, at the rate of

..... per 2240 lbs.

on invoice or landing Gross Weight (at ship's option), with charges as above.

All freight payable on measurement to be paid on the extreme or caliper measurements, the shipowner to have the option of charging on the shippers' measurements or those ascertained on delivery.

IT IS MUTUALLY AGREED that the steamer, in addition to the liberties above mentioned, shall have liberty to carry cargo and live stock on deck, to sail with or without pilots, and to tow and assist vessels in all situations and to save life or property and to deviate for any such purposes; that the carrier shall have liberty to convey goods in craft and/or lighters to and from the steamer at the risk of the owners of the goods, and in case the steamer shall put into a port of refuge, or be prevented from any cause from commencing or proceeding in the ordinary course of her voyage, to land and/or tranship the goods and forward them to their destination by land or water.

IT IS ALSO MUTUALLY AGREED that the carrier shall not be liable for loss or damage or delay occasioned by the Act of God, perils of the seas or other waters or accidents of navigation of whatever nature or kind, collisions, stranding, jettison, fire or explosion from any cause whether on board or ashore or howsoever occurring, barratry of the master or crew, enemies, pirates or robbers, theft of whatever kind and whether by persons on board or not, and whether or not in the employment of the carrier or howsoever, arrest or restraints of princes, rulers or people, civil or political disturbances or hostilities, bursting of boilers, breakage of shafts, accidents to refrigerating or other machinery or appurtenances thereto, any latent defect in hull, machinery or appurtenances, unseaworthiness of the steamer, whether existing at the time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy, heat, steam, rain, snow, spray, frost, thaw, ice, floods, decay, putrefaction, rust, sweat, change of character drainage, leakage, breakage, heating, vermin, stowage or contact with, leakage, smell, evaporation or taint from other goods, coal, coal dust or oil, drainage or taint from live stock or their excretions or their stalls, hook marks, or injury from hooks, nor for any loss or damage or delay arising from the nature of the goods or the insufficiency of package, nor for incorrect delivery of goods arising from the obliteration, errors, insufficiency or absence of marks, address or description, nor for any injury to wrappers or packages, nor for country or inland damage, nor for any loss or detention of or damage to goods whilst in craft or hulk, or during transhipment or while awaiting shipment or delivery, nor for any loss or damage or delay caused by the prolongation of the voyage, nor for deaths of or injury to live stock, however occasioned, nor for any loss or damage or delay whether caused by any act, negligence, default, or error in judgment whatsoever of the pilot, master, crew, lightermen, stevedores or other persons whomsoever, in the service of the carrier or his agents, or persons for whose acts the carrier would otherwise be responsible and whether upon any dock, quay or wharf or elsewhere on shore, or on the steamer herself or any other vessel, lighter or craft, nor for any loss, damage or delay howsoever occurring, caused directly or indirectly by reasonably unavoidable delay of the vessel to repair or renew hull or machinery, or by riots, strikes, stoppage of labour, lock-outs, labour disputes, or disturbances of any kind, or by any reasonable course of action adopted by the ship owner or other person whomsoever in contemplation or consequence thereof or in connection therewith; and that the carrier shall not be concluded as to statements herein of quality, quantity, gauge, brand, contents, condition, measure, weight and value.

ALSO, that Merchandise on wharf awaiting shipment or delivery is at shipper's risk of loss or damage by collapse of wharf, fire and flood not happening through the fault or negligence of the owner, master, agent, or manager of the vessel; and also, that as soon as the goods are discharged over the ship's side wherever they may be, they shall be at the risk of the shipper or consignee, any custom of the port to the contrary notwithstanding.

General average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master, or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees, shippers and owners of the cargo shall not be exempted from liability for contribution in general average, or for any special charges incurred, but shall contribute in general average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defects or unseaworthiness. It is further agreed that, in addition to the liability of any other person as owner of the goods, the shippers shall be liable for all contributions in general average and special charges payable in respect of the goods, whether or not he be liable therefor as owner of the goods.

In accepting this Bill of Lading, the Shipper, Owner or Consignee of the goods and the Holder of the Bill of Lading, agree to be bound by all of its stipulations, exceptions and conditions, whether on the face or back hereof, whether written or printed or stamped, as fully as if they were all signed by such shipper, Owner, Consignee or Holder.

IN WITNESS WHEREOF, the Master or Agent of the said Steamship hath affirmed to TWO Bills of Lading, all of this tenor and date, one of which being accomplished and given up to the Carrier, the others to stand void.

Dated in.....By authority as Agents.

BALFOUR, GUTHRIE & CO.

Per.....

1734 8-24

42

HARRISON DIRECT LINE

BALFOUR, GUTHRIE & CO., AGENTS

SHIPPED, by

1. IT IS ALSO MUTUALLY AGREED that the value of the goods shipped hereunder does not exceed the sum of £20 for any one package or the sum of £2 per cubic foot whichever shall be the least unless otherwise stated, and the rate of freight is adjusted accordingly and the carrier's liability shall in no case exceed such sum unless the value in excess thereof be specially declared and stated on the shipping note accompanying the documents and such value bought on which ad valorem paid thereon.

2. ALSO, that the said conditions apply, which gold, silver, bullion, specie, precious stones or metals, coins, jewelry, articles used for jewelry, plate or plated articles, watches, clocks, bank notes or bills, securities for the payment of money, documents, deeds, writings, pictures, paintings, engravings, works of art, silks, manufactured or otherwise, furs, lace, china, glass, pianofortes, jewelry, watches, chronometers of any kind of clocks or any other articles of a valuable nature are carried in that the carrier shall be under no liability beyond such value, unless the true character and value thereof is marked on the shipping note accompanying the goods and entered in the Bill of Lading, and such increased value is paid or agreed to exchange for the Bill of Lading. In the case of glass, china, earthenware or other fragile articles shipped specially declared or not the carrier shall be under no liability for damage or breakage from whatsoever cause arising unless due to improper stowage.

3. ALSO, that liability for the loss of or damage to any piece or package shall never exceed the invoice value of such piece or package.

4. ALSO, that shippers shall be liable for any fines, damages or expenses incurred by the carrier, and any loss or damage to steamer or cargo, caused by or in consequence of inflammable, explosive or dangerous goods, shipped without full disclosure in writing of their nature, whether such shipper be principal or agent, and whether he shall be aware thereof or not and such goods may be thrown overboard or destroyed at any time without compensation.

5. ALSO, that the shippers and consignees and each of them shall be liable for all fines, expenses and damages which the carrier, steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents or by reason of any failure by shippers or consignees to comply with Customs or Port Regulations or other requirements of any Civil Authorities.

6. ALSO, that the carrier shall have a lien on the goods for all freights, demurrage, damages for detention, primages, general average and charges, whether payable in advance or not, and also for all fines, expenses or damages which the carrier, steamer, or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or the dangerous or injurious nature thereof, or by reason of any failure by shippers or consignees to comply with Customs or Port Regulations, or other requirements of any Civil Authorities, or any failure by the shippers or consignees to comply with any of the terms of this Bill of Lading. Also, that the carrier shall have a right of sale over goods subject to any lien, and shall have a lien on the goods for the costs and expenses of exercising any lien, and of any sale of the goods; and if on a sale of the goods at destination the freight and charges, the proceeds fail to cover said freight and charges and expenses of exercising any lien thereon and of the sale of the goods, the carrier shall be entitled to recover the difference from the shipper.

7. ALSO, that in case the whole or any part of the goods specified herein be landed at any port whether short of or beyond their destination, even if owing to the negligence of the carrier's agents or servants, the carrier may forward them to their destination by rail or water at the risk of the owner of the goods, and upon so forwarding them shall be under no liability in respect of such handling or of the goods not being landed at their destination.

8. ALSO, that in case the steamer shall be prevented from reaching her destination, or discharging without delay, by generation, blockade, interdict, ice, war, civil or political disturbances, strikes, lock-outs, or if the master shall consider it unsafe, without any delay, to proceed to, enter, or discharge at her destination, or to remain at any port to complete the discharge of the goods, the master may immediately discharge the goods into any depot, lazaretto, lighter, or other vessel, or proceed to and land the goods at any available safe port, and such discharge into depot, lazaretto, lighter or vessel, or landing at another port shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be paid by the shipper and/or consignee of the goods and the carrier shall have a lien on the goods therefor.

9. ALSO, that the steamer may discharge the within goods immediately on arrival at any place or places, whether usual, customary or not within the port of destination, which may be selected by the shipowners or their agents, and may discharge continuously on to wharf or into hulk, lazarette or lighter, irrespective of weather, Sundays and holidays included, any custom of the port to the contrary notwithstanding, the proper Port Authority being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer without reference to time of day or state of weather, the master or steamer's agent shall be at liberty to enter and land the goods, or put them into craft, warehouse, store, or on the quay, at the receiver's risk and expense, and the steamer and carrier shall have a lien on such goods for the payment of all costs and charges so incurred. The ship's responsibility shall cease immediately on the goods being discharged from the ship's tackle, any custom of the port to the contrary notwithstanding. If the consignee shall take delivery overside he shall use for the purpose craft suitable for the place of discharge selected by the shipowners or their agents.

The consignee shall pay duty or bond the goods at the port of discharge and pay all taxes, dues, or imposts levied on them.

Any duty, tax or impost, of whatever nature, levied upon the steamer at the port of discharge, for or in connection with the goods, shall be paid by the consignee before delivery.

Weight and measurement of all goods shall, if required by the carrier, be verified at the port of discharge, and freight, although prepaid, adjusted and paid accordingly, and all charges for weighing goods in, ascertain freight or for Customs purposes shall be paid by the consignees.

All consignees of landing living animals shall be borne by the shippers and/or consignees.

Full freight or £10 sterling per ton, whichever shall be the greater, will be charged on all goods incorrectly described.

All necessary cooperage charges shall be paid by the consignees. Wharfage and/or Harbor Dues on cargo and all carting to destination shall be paid by the consignees. Porterage of the delivery of the cargo shall be done by the agents of the ship at the risk and expenses of the receivers of the goods, and tonnage and shed dues shall be paid by the consignees of the goods and all metals shall be trucked and paid at their expense. Consignees of lumber shall pay expense of receiving from ship's tackle, stowing and piling on quay.

10. ALSO, that if any existing or future order or restriction of the Board of Trade or Civil Authorities at ports of shipment should prevent the above goods from being conveyed in any steamer, the carrier shall be free of any liability for non-fulfillment of his portion of the contract.

11. ALSO, that all goods carried at through rates via the port of loading and/or to places beyond the port of discharge are subject to all the terms and conditions of the carriers, assisting in their conveyance, and that the carriers shall not be liable for any loss or detention of, or damage to any goods, where the damage is done, or the loss or detention occurs, while the goods are not in the actual possession of the carrier.

12. ALSO, that the carrier, his agents and servants, shall not under any circumstances whatever be under any liability for failure to notify consignees of arrival of goods, any custom of the port to the contrary notwithstanding.

13. ALSO, that freight prepaid shall not be returned, goods lost or not lost.

14. ALSO, that full freight is payable on damaged or unsound goods, and on any goods condemned, confiscated or removed by order of the Port Sanitary or other authority at port of discharge but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

15. ALSO, that freight on live stock is payable on the number shipped, without regard to and irrespective of the number or condition of those landed.

16. ALSO, that this Bill of Lading, duly endorsed, be given up to the steamer's agent, if required, in exchange for delivery order.

17. ALSO, that the carrier shall not be responsible on shipments of lumber, logs, staves, etc., for number of pieces in bundles nor for splits, cracks, flaws or discolorations, shakes and broken bundles (unless same be caused by careless handling of the vessel).

18. ALSO, that in no case can steamer accept responsibility for delivery to other than leading marks.

19. ALSO, any claim which an owner of goods carried on through Bill of Lading desires to prosecute shall only be made against the party in whose possession the goods were when the event occurred on which the claim is based.

20. ALSO, that all disputes under this Bill of Lading arising at U. K. ports, where the sum in dispute or damage claim is not more than £100, shall be settled by arbitration at the port of delivery in the manner customary there.

21. ALSO, that the carrier shall not be accountable on shipments packed in barrels for leakage, breakage or rust except from improper stowage. Freight payable on barrels whether full, part full, or empty.

22. ALSO, that this contract shall be governed by the law of the flag of the vessel carrying the goods, except that General Average shall be adjusted according to York-Antwerp Rules.

23. ALSO, that in case the steamer shall be prevented by ice, in the River Scheldt, from reaching Antwerp, the privilege is reserved of sending steamer's expense, but without steamer's risk, to discharge and store the within-mentioned merchandise at Flushing, or other accessible point, in warehouses or lighters, to be forwarded as soon as practicable to Antwerp by lighters or rail, at the steamer's option and expense, but at the risk of the owner of the goods.

24. ALSO, that Sterling Freight be at the Quoted Short Exchange on London, and Dollar Freight at Fifty Fifteen and Twenty-five Centimes to Gold to the Dollar.

25. ALSO, that the goods be landed on the quay at Antwerp and received therefrom by consignees. Consignees of such goods to pay the agents of the Line the expense of watching and for delivery charges. Fr. 1.50 per 1000 K.

Clauses (23, 24, 25) relate only to shipments destined to Antwerp.

26. **LONDON CLAUSES.** Without prejudice to Clause 9. (a) The shipowners shall, at their option, be entitled to land the goods upon quays situated on the quays, or to discharge them into craft hired by them, immediately on arrival, and so continuously night and day as required, the consignees being entitled to collect the same charges on goods entered for landing at the docks as on goods entered for delivery by craft. Consignees desirous of conveying their goods elsewhere shall, on making application to the Ship's Agents, or to the Dock Company which they may appoint, receive a delivery order which shall have been reported, be entitled to delivery into consignee's lighters at the discharging berth in the dock, the Dock to be free from claims against release, or to the Dock Company, if so directed by the Ship's Agents, who, following customary practice, may require the goods to be landed into craft provided by them. Grain in bags, bran, pollard, linseed cake, oil cake, meal, flour, hides, skins, rags, bones, horns, hoofs, tallow, oils, fats, glue pieces, blind rollers, bales, packs, bundles, sacks, bags, boxes, cases, crates, drums, casks, barrels, hampers, baskets, wheels and oars, 1/3 per ton measurement; hops, 1/6 per ton weight; bullion, specie, precious stones or metals, 2/6 per ton weight at ship's option. All other general cargo except steam, 1/3 per ton weight or measurement at ship's option. Timber to pay 2/- per ton weight. Cheese may also be removed by consignee's own lighters, but in such case shall be subject to a like payment of 2/3 per ton weight, such sum to include landing up and primage, but not to include any extra expense for handling if removed. All measurement freight to be on the basis of 40 cubic feet to the ton. Grain (grain excepted) to be paid upon the weight stated herein or at ship's option upon the weight ascertained by the ship's Agents, the expense of weighing to be a charge upon the goods. All shipments of lumber and logs which are sold by measurement to be delivered by measurements furnished at port of shipment. No alterations will be permitted in any weights or measurements.

(b) Grain for overside delivery is to be applied for within 24 hours of ship's docking, or [illegible] hours of sufficient consignee's craft with responsible persons in charge to receive it, and on such [illegible] working hours, the Master or Agent may land or discharge into lighters at the risk and expense of the consignees. Grain may be discharged continuously day and/or night, any grain landed or discharged by ship's [illegible] duly in attendance, and any grain that may be landed or discharged before or after normal [illegible] not, is to be given up free to consignee's craft applying for same within 72 hours from [illegible] usual dock charges. An extra freight of 7d. per ton shall be paid to the shipowner on each [illegible] or not. The grain to be weighed at time of discharge, either on dock and/or quay and/or craft, at ship's [illegible] weighing) for grain in bulk and/or ship's bags, to be paid by the consignee with [illegible] by the ship's Agents, in exchange for release at the rate of 1/3 per ton on wheat, maize and heavy grain; 1/6 per ton on [illegible] ton on oats.

(c) HAY, ILLUMINATING AND LUBRICATING OIL CLAUSE. Consignees to have [illegible] delivery from ship or quay at shipowner's option, working continuously day and/or night, [illegible] goods will be put into Captain's entry craft at consignee's risk and expense.

Craft which are in attendance for delivery under above clause and stipulations shall remain free of demurrage [illegible] or grain as required by shipowners, either from steamer or quay, or Captain's entry craft.

These London clauses A, B and C are to form part of this Bill of Lading, and any words at variance with them are hereby cancelled.

27. ALSO, that the shipowners shall have the same liens, rights and remedies on goods and grain redelivered to the above clauses or under any other clauses of this Bill of Lading, as they have by law in respect of freight.

28. ALSO, that the exceptions and conditions enumerated in this Bill of Lading shall apply during the voyage, and while on the quays or docks of the dock for any purpose whatsoever and until the goods and/or grain are actually delivered to the consignees or their agents.

29. ALSO, that neither party shall be liable for any interference with the performance of the contract hereby entered into to be caused by strikes or lock-outs of seamen, lightermen or shore labourers, whether partial or otherwise, nor for any [illegible] of such [illegible] case the shipowner shall be entitled to land or put into craft at the risk and expense of consignees. In case the goods [illegible] forms part of a larger bulk, each Bill of Lading to bear its proportion of [illegible] and damage, if any.

30. ALSO, that the carrier shall have the benefit of any insurance effected upon the goods.

31. IT IS ALSO MUTUALLY AGREED that this shipment, if made at a United States port, is subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled an Act Relating to Navigation of Vessels, etc., and if made at a Canadian port is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

Lib. Eb.16.

EASTBOUND.

UNITED AMERICAN LINES

EUROPEAN REPRESENTATIVES & CORRESPONDENTS:

LONDON, E. H. MUNDY & Co. Ltd.
LIVERPOOL, E. H. MUNDY & Co. Ltd.
GLASGOW, E. H. MUNDY & Co. Ltd.
HAMBURG, HAMBURG-AMERIKA LINIE.
DEUTSCHE DAMPFSCHIFFAHRTS-GESELLSCHAFT „KOSMOS".
BREMEN, ROLAND-LINIE AKTIENGESELLSCHAFT.
ANTWERP, KENNEDY, HUNTER & Co.
ROTTERDAM, Wm H. MÜLLER & Co.

UNITED STATES REPRESENTATIVES:

NEW YORK, UNITED AMERICAN LINES
No. Broadway.
GENERAL AGENTS PACIFIC COAST:
BARNES & CHRISTENSEN, San Francisco,
324, California Street.
LOCAL AGENTS PACIFIC COAST:
LOS ANGELES, LOS ANGELES STEAMSHIP COMPANY.
PORTLAND, COLUMBIA PACIFIC SHIPPING COMPANY.
SEATTLE, BARNES & CHRISTENSEN.
CRISTOBAL, THE PANAMA AGENCIES Co.
BALBOA, THE PANAMA AGENCIES Co.

BILL OF LADING

Received at Port of Shipment named overpage by agents for the owners of the vessel named overpage (the term Carrier hereinafter used being intended to include said vessel and any substitute or continuing Carrier) from the Shipper named on the back hereof, the packages described on the back hereof (hereinafter called the Goods, the Carrier's responsibility in respect of description thereof being limited as hereinafter provided), in apparent good order and condition, except as otherwise indicated; **TO BE TRANSPORTED** by vessel named on the back hereof, or failing shipment by said vessel, in or upon another or following vessel or vessels, (the term Vessel hereinafter used being intended to include said vessel and any substituted or continuing vessel), or connecting carrier to the discharging port named on the back hereof, or as near thereto as the Vessel can safely get, and there delivered in like good order and condition, in matters as hereinafter provided for, upon payment of any unpaid freight and other sums payable by the Shipper, Consignee and/or assigns and/or said goods hereunder, to the Consignee named on the back hereof, or order if so provided, subject always to the

TERMS OF THIS CONTRACT BILL OF LADING WHICH ARE HEREBY MUTUALLY AGREED UPON AS FOLLOWS:

1. The freight is adjusted in consideration of all the terms and provisions of the contract whether written, printed or stamped.

2. All particulars herein mentioned of the Goods, except only the number of packages with the marks thereon, are those declared by the shipper and the Carrier (including anything in the bill of lading, where applicable, inconsistent with the foregoing) is relieved from all liability for the accuracy of the description of the Goods as furnished by the shipper (which description is inserted herein only for the purpose of identification of the Goods and is hereby consented to), but shall be deemed only representations of the shipper.

3. Freight and advance charges as indicated on the back, if prepaid or intended to be prepaid, shall be deemed fully and irrevocably earned upon receipt of the goods by the Carrier, vessel or goods lost or not lost, even though voyage is not begun or goods not landed. All freight and charges due the Carrier shall be paid in United States currency, New York funds. If payable at destination prepaid shall be made at the current rate of exchange for United States gold on the day the vessel's entry at the Custom House, unless otherwise provided herein. The carrier shall have a lien on goods on which freight and charges are due for the said freight and charges and may refuse to deliver the goods until freight and charges are paid. Any part of the freight prepayment may be abandoned thereby the shipper remains liable and the Carrier may collect the same from the shipper. All goods shall be jointly and severally liable for such freight and charges and may be detained therefor. Full freight and charges shall be due to the Carrier on accidental, constructive and total loss of Goods, vessel or vessels. Goods lost or not delivered shall remain liable for any freight or charges on Goods, vessel or vessels damaged, delayed or lost during the voyage. In the event of the Carrier being unable to collect all freight and charges due at destination contemplated by the undertaking or abandoning of the Goods by reason thereof, the Carrier shall have the option of selling the goods at auction and the shipper shall be liable for any deficit, should the net proceeds of the sale be insufficient to cover the Carrier's freight and charges. Any surplus from the net proceeds of the sale after discharging the Carrier's freight and charges to be paid to the Consignee or the bills of lading properly endorsed. Freight and charges subject to correction. If weights or other information for freight purposes has been incorrectly given by shipper, the expenses thereof, and any to ascertain the actual weight, etc., shall become an additional charge on the Goods and shall be payable by shipper, consignee and/or assigns.

4. The carrier may substitute another vessel or vessels or transship the whole or any part of the goods by any other vessel, whether operated by the Carrier or by others at the original port of shipment, or at any other place or places deemed advisable by the Carrier for any reason, when necessary for them to reach the destination of the vessel with the goods on board, either before or after proceeding beyond the port of destination. The vessel may remain in port, proceed by any route and deviate from or change the advertised and intended route at any stage of the voyage and may proceed to and stay at any place whatsoever, although in a contrary direction to or outside of the usual or advertised route, for any purpose whatsoever, and may sail without pilots, tow and assist vessels in all situations and deviate for the purpose of saving life or property.

5. In case the voyage is broken up or is for any reason delayed or interrupted as to make it impracticable so to do, the Carrier may forward the goods to or toward the port of destination above named by another vessel or conveyance (either of the Carrier or of another), for which an additional freight shall be paid, or may store the same at the nearest practicable place; all at the risk and Expense of the goods, their shipper, owner, and/or consignee. Such forwarding or storage shall constitute a valid delivery under this contract, terminating all responsibility of the Carrier, provided that reasonable notice be dispatched to shipper or consignee; but the Carrier shall retain a lien on the goods for all proper charges and expenses. If salvage services be rendered to the Goods by the Carrier they shall be paid as if rendered by strangers.

6. The Carrier shall not be liable for loss, damage, delay, or default occurring from any of the following causes: Acts of God; restraints of princes, rulers, and people; barratry of master or crew; enemies; pirates; robbers or thieves, whether within or without the ship; war; hostilities; riots; civil commotions; strikes; lockouts; stoppage or disturbance of labor; partizans; epidemics; perils of the sea and other waters; fire, wheresoever occurring and means used to extinguish the same; explosions; collisions; stranding; explosion or bursting of boilers or other Goods; fermentation; heat; frost; breakage of shafts; accidents to machinery; confusion; jettison; standing; delay; detention; prolongation of voyage; accidents of or damage incident to navigation, transportation, or storage of whatsoever kind and wheresoever occurring; risk of craft, hulk, or transshipment; latent or other defect in hull, machinery, or appurtenances of vessel or any craft or unseaworthiness thereof, although existing at the time of or beginning of voyage if not discoverable by due diligence; floods; effects of climate; heat; cold; ice; venting by sea water, rain or otherwise; smoke; earthquakes; fumigation; sweat; decay; rust; stains; leakage; breakage; shrinkage; loss of weight or contents; evaporation; inherent defect, quality, or vice of the goods; vermin; rot damage; loss damage; falling or destruction of wharf, shed, or warehouses; condition or insufficiency of packages or wrappers, or injury to or soiling of same; obliteration, illegibility or insufficiency of marks, numbers, addresses or description; stowage on or under deck, or on hatch, leakage, or taint from, or any accident to, any other Goods (the vessels being privileged to carry any lawful merchandise, whether hazardous or contraband or not, including live stock as cargo or otherwise, on or under deck); seizure or detention by process issued by any court or civil authority, any act, omission of the shipper, owner, or consignee of the goods or their representatives; saving or attempting to save life or property at sea or any deviation in rendering such service; any cause (whether or not of the kinds above enumerated) beyond the carrier's reasonable control.

7. General Average shall be payable in accordance with York-Antwerp Rules 1890 and at carrier's option as to matters not therein provided for in accordance with the laws and customs of the port of New York. All General Average statements shall be prepared at the vessel's final port of discharge or elsewhere at the carrier's option. If the carrier shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of fire, explosion or disaster resulting from fault or error in navigation or in the management of the vessel, or from any latent or other defect in the vessel, or machinery, or appurtenances, or from unseaworthiness, although existing at the time of shipment or at the beginning of the voyage (provided the defect or unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees, or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect to the cargo, and shall contribute with the carrier in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

8. This shipment is subject to all the exemptions and limitations from liability contained in the act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to the Navigation of Vessels, etc.," even though the vessel be not transporting property to or from any port in the United States. In the event of shipment being made from a Canadian port the shipment is subject to all the terms and provisions of and all exemptions from liability contained in the recent Carriage Goods Act, 1910.

9. The Carrier shall not be liable for any articles enumerated in Section 4281 of the United States Revised Statutes, except in accordance therewith and after written notice of the true character and value of such goods, given at the time of loading and increased freight paid.

10. Unless a higher value be declared in the dock receipt at time of shipment and stated herein, the value of the Goods does not exceed $ 5.00 per cubic foot or $ 5.00 per 100 pounds and in no event does the carrier assume more than $ 100.00 per package or piece. The freight thereon has been adjusted on such valuation, and no special declaration or agreement shall be evidence of a different valuation. In no case shall the liability of the Carrier in respect of the goods on value shall be placed thereon higher than the invoice cost (including prepaid freight hereunder) not exceeding $ 5.00 per cubic foot or $ 5.00 per 100 pounds, nor in any event $ 100.00 per package or piece (or such other valuation as may be stated herein), nor shall the Carrier be held liable for any profits or increase of price or value over such cost not exceeding such value, nor for any special or consequential damagement the Carrier shall have always the option of replacing any lost or damaged Goods. In case of partial loss or damage, the Carrier shall not be liable for more than such proportion of the sum as $ 100.00, or the value declared herein to the actual value.

11. The Carrier shall not be liable for any loss, shortage of or damage to Goods, or delay in delivery of the same, unless notice of claim therefore be presented in writing to the Carrier or to the master or agent of the vessel before removal of the Goods. No suit or proceeding to recover for or upon any claim or demand shall be maintained against the Carrier or Vessel or Owners thereof unless commenced and summons served upon the Carrier within six months after the delivery of the Goods to the Carrier, and the lapse of such period shall be deemed a complete bar to any such suit or proceeding and cause of action barred, notwithstanding the Carrier may be a non-resident or a Foreign Corporation. In no case shall the total liability of the Carrier to all claimants in respect of damages arising from any casualty exceed the value of the owner's interest in the vessel, or her vessels and pending freights. Nothing shall be deemed a waiver of the provisions of this article except a written express waiver signed by the Carrier.

12. In case of any loss or damage for which the Carrier shall be liable, the Carrier shall to the extent of such liability have the full benefit of any insurance that may have been effected upon the Goods or against said loss or damage and the Carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods pending any claim for the insurance on such goods.

13. If, because of conditions, actual or reported, at or near the port of discharge, such as war, hostilities, insurrections, civil commotions, blockade, interdict or any other regulation of any government, or of combination of the sea or weather, epidemic, disease, quarantine, disturbance of labor, congestion of wharves, lack of discharging facilities, or of any other conditions (whether of the nature to those named or otherwise, and whether existing or anticipated) not due to the carrier's fault, the master shall reasonably decide it is likely that it will be impracticable to proceed to the said port of discharge, or that the discharge of the cargo is likely to be unreasonably delayed there, or that entry of the port of discharge on consumption thereunder may render the vessel liable to quarantine at any subsequent port, then the master may, according to his judgment, (1) retain the goods on board for delivery on return to the said port or any other (2) store the goods ashore or on lighters or craft at the port or place where the vessel then is or at the nearest practicable place, or (3) store the goods ashore or on lighters or craft at the port of destination or the nearest practicable place thereto, or at the port nearest thereto to which the vessel is bound, or (4) forward the goods from any port and by any means to or toward the port of destination by such route as considered advisable by the master, all at the risk and expense of the goods, their shipper, owner and/or consignee. Such storage or forwarding shall constitute a valid delivery hereunder, terminating all responsibility of the Carrier, provided that reasonable notice be dispatched to shipper or consignee; but the Carrier shall retain a lien on the goods for all proper charges and expenses. If salvage services be rendered to the Goods by the Carrier they shall be paid as if rendered by strangers.

14. The vessel may commence discharging immediately on arrival in the customary berth, day or night, at any and all discharging ports, and any delay of the goods in the vessel's discharging or delivery after the goods have been finally committed to land, or placed on the dock at the port of discharge, or after the goods are ready to be taken from the vessel's tackle, shall be at the risk and expense of the goods, their shipper, owner and/or consignee. The Carrier shall not be liable for any loss or damage to the goods occurring after the goods are ready to be taken from the vessel's tackle, whether the goods be then taken away or not, and the Carrier shall have a lien on the goods for all storage charges and expenses

mentioned herein in every respect. If owners of the goods during transportation by rail or rail to be by rail payment, should the owners of the goods desire to give special orders for the transportation from port of shipment they must give the use of letters on receipt of the goods there and Carriers will comply with such orders as far as possible, but always at the risk and expense of the goods.

(2) —Open rate at Hamburg Gold Mark 0.10 per 1000 kgs (minimum G.M. 0.30) to be paid by consignee on gold equivalent to the average currency prevailing.

ANTWERP—(1) In case the vessel shall be prevented by ice in the River Scheldt from reaching Antwerp, the goods are to be discharged at the Carrier's option, but without vessel's risk to discharge and store at a recognized warehouse at Flushing or other available ports, in warehouses or lighters, or the first vessel or vessels or conveyance to discharge by lighters or put on the vessel's option and expense, but at the risk of the owner of the goods.

(2) ALSO, that in case the regular steamship sailings to final port of delivery should be suspended or curtailed, by the failure of ice or other causes, the carrier, at the option of the owner or consignee of the goods, or the holder of the Bill of Lading, may forward the goods by the nearest available ports, this or another vessel, to final port of destination at expense of the goods and freight earned to be paid at destination in exposed cash.

(3) ALSO, that the vessel may discharge day and night without interruption. Cargo to be loaded and discharged at the consignee or by the consignees appointed by the shippers; consignees paying customary rates. Working of cargo by consignees at normal rate. Consignees to remove goods from quay in customary quick despatch according to circumstances. Should the time they are on the quay to be exceeded, they shall pay demurrage (the goods during the time they are on the quay to be subject to the conditions of clause 11 and the other clauses of the Bill of Lading), failing which the master shall be at liberty to store the goods or put them into craft without notice (any custom or rule to the contrary notwithstanding) at consignee's risk and expense.

ROTTERDAM/AMSTERDAM—(1) In case the Vessel is prevented from reaching Rotterdam or Amsterdam, by ice or otherwise, the goodsare to be entered at the Vessel's option, but without Vessel's risk, to discharge and store the goods, consignees at either Ports of Holland, Flushing, Zierikzee, Brouwershaven, Willemstad, Moerdijk, Dordrecht, Hellevoet, Maassluis, or Vlaardingen, to be forwarded (& Rotterdam or Amsterdam) by lighters at Vessel's expense, but without Vessel's risk or same as practicable.

(2) ALSO, Sterling freight to be paid at the quoted short exchange on landing on the date of the Vessel's report at the Custom House, but not less than London guilders 0.C. to the £ sterling. Dollar freight to be paid at the quoted rate of eighty cents per New York on the date of Vessel's report at the Custom House, but not less than two and a half cents U. C. to the dollar.

BREMEN—The goods are to be delivered at the City of Bremen free of lighterage, and to be received without any assistance after the vessel or lighter is ready to discharge, at any pier she may select, by the consignee (the responsibility of the vessel to cease immediately the goods are discharged) or there to be stored on the quay or in warehouses, or in inland lighters, at the risk and expense of the consignees. If the river navigation is impeded or threatened to be impeded by ice, the cargo to be stored in BREMEN, HAVEN, NORDENHAM or GEESTEMUENDE, on the quays, or in warehouses, lighters or steamers at the Carrier's option, and at the risk of the consignees, and thence to be forwarded to BREMEN by rail, at the expense and risk of the consignees as soon as sufficient railway trucks are on hand.

HAVRE—The contemporaneous of the delivery of the goods to be done by the consignees of the vessel, at the expense and risk of the consignees of the goods. Goods landed without marks, with wrong ones, or damaged owing to the ignorance of the vessel's agent (or contemporaneous) among the consignees of goods whose lots may be short.

22. Attention of shippers is called to Sec. 237 of the Penal Laws of the United States (Act of Congress, March 4, 1909), viz.: "Every package containing explosives or other dangerous articles, when presented to a common carrier for shipment, SHALL HAVE PLAINLY MARKED ON THE OUTSIDE THEREOF THE CONTENTS THEREOF, and it shall be unlawful for any person to deliver or cause to be delivered to any common carrier engaged in interstate or foreign commerce by land or water, for transportation in interstate or foreign commerce, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosives or other dangerous articles under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without INFORMING THE AGENT OF SUCH CARRIER OF THE TRUE CHARACTER THEREOF, AT OR BEFORE THE TIME SUCH DELIVERY FOR CARRIAGE IS MADE. Whoever shall knowingly violate or cause to be violated any provision of the section . . . shall be fined not more than $ 2,000 or imprisoned not more than eighteen months, or both."

23. Nothing herein contained is to be taken as depriving the owner of any right to limitation of liability to which he would otherwise be entitled.

24. This Bill of Lading, duly endorsed, shall be given up to the Carrier's representatives in exchange for a delivery order.

25. The shipper, vessel, consignee, destination and goods referred to overpage as mentioned or described on this side (back) hereof are as follows:

Port of Shipment ..... Shipper .....

Vessel ..... Owner of the [redacted] vessel .....

Bound for ..... Destination of Goods .....

Consignee: Order of ..... or assigns. Notify (If consigned to Shipper's Order) .....

SHIPPER'S DESCRIPTION OF GOODS

(Carrier's responsibility for description being limited as hereinbefore provided.)

MARKS	NUMBERS	NUMBER OF PACKAGES	DESCRIPTION OF PACKAGES AND CONTENTS	GROSS WEIGHT

United States District Court
No. 17692
In
Libelant's Exhibit No. 16
Dec. 31, 1924
TER B. MALING, Clerk
Deputy Clerk

No. 4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON,
CLERK.

FREIGHT PAYABLE AT:

32. AND FINALLY that in accepting this Bill of Lading, the shipper, owner, and consignee of the Goods and holder of this Bill of Lading agree to be bound by all its provisions, on this page and overpage, whether written, printed or stamped, as fully, as if signed by all of them.

In WITNESS WHEREOF..... Bills of Lading (exclusive of non-negotiable copies) all of this tenor and date, have been signed, ONE of which being accomplished the others to stand void.

Dated at _____ 192__

For the Master:

FREIGHT CHARGED ON	RATE	FREIGHT
cbm	per 100 lbs	
	" " "	
	" " "	
	" " "	
	per	
	"	
	"	
	Total Freight	
	Advance Charges	
TOTAL PAYABLE AT _____		

722

B/L No.

EUROPEAN AGENTS

BORDEAUX—Compagnie Generale Transatlantique
15 Quai Louis XVIII

HAVRE— Compagnie Generale Transatlantique
[illegible] Boulevard de Strasbourg

DUNKIRK— Compagnie Generale Transatlantique
Place Alfred Pelpt

ANTWERP—Compagnie Generale Transatlantique
14 Place de Meir

LONDON— Compagnie Generale Transatlantique
4 Lloyd's Avenue

ROTTERDAM—Les Consignataires Reunis
11b Willemsplein

HAMBURG—Les Consignataires Reunis
7 Admiralitaet Strasse

COMPAGNIE GENERALE TRANSATLANTIQUE

FRENCH LINE

PACIFIC COAST AGENTS

VANCOUVER—Empire Shipping Co.
Sub-Agents
815 Hastings Street West

SEATTLE— General Steamship Corporation
Sub-Agents
Colman Building

PORTLAND— General Steamship Corporation
Sub-Agents
Porter Building

SAN FRANCISCO—The Texas Transport & Terminal Co., Inc.
General Agents
240 Battery Street

LOS ANGELES—General Steamship Corporation
Sub-Agents
541 South Spring Street

SAN DIEGO— Sprecke Bros. Commercial Co.
Sub-Agents
Union Building

BILL OF LADING

PACIFIC COAST EUROPEAN SERVICE

RECEIVED in apparent good order and condition from.....

at the port of.....to be transported by the steamship.....
with liberty to substitute (or tranship goods by) any other or succeeding steamer also with liberty either before or after proceeding towards the port of discharge, to proceed to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route of said port of discharge) once or oftener, in any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), or loading or discharging cargo or passengers, or for any purpose whatsoever. Nothing in this Bill of Lading, whether written or printed, or implied therefrom, shall limit or affect the provisions of this clause. Also with liberty to the vessel to adjust compasses after commencing voyage, and with liberty to carry horses, cattle, sheep, or other animals on or under deck, and to carry goods of all kinds under, and on deck; the following goods or packages, said to contain merchandise as hereinafter specified, and said to be marked and numbered as per margin below, shippers weight; the quality, quantity, gauge, measurement, weight, value, contents, and/or condition of contents of, or marks on, said merchandise unknown; to be delivered (subject to the exceptions and conditions enumerated herein) at vessel's tackles at the port of.....

.....or so near thereto as the vessel may safely get and always lie afloat, unto.....

.....

.....

or to his or their assigns, he or they paying freight and charges immediately on discharge of the goods without any allowance of credit or discount at the rate stipulated below (unless prepaid at port of shipment), on the gross intaken weight or measurement as below, or as may otherwise result on verification of same at port of destination. Cost of weighing at the expense of the merchandise.

MARKS AND NUMBERS	PKGS.	CONTENTS	WEIGHT	CUBIC FT.	RATE	FREIGHT

In the United States District Court
No. 17693

Libelant's Exhibit No. 17
Filed Dec. 31, 1934
LEO B. MALING, Clerk
By J. A. Schaertzer Deputy Clerk

No. 4749
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1936
F. D. MONCKTON.
CLERK.

VALUE DECLARED BY SHIPPERS:

THIS CONTRACT SUBJECT TO ALL THE STIPULATIONS AND AGREEMENTS HEREON SET FORTH ON EITHER SIDE HEREOF

And FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of Bill of Lading agree to be bound by all of its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were signed by each shipper, owner, consignee or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of special contract.

IN WITNESS WHEREOF, the Master or Agent of the said steamship hath affirmed to.....Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in.....this.....day of.....19..

Accepted as to all the terms and conditions hereof.

COMPAGNIE GENERALE TRANSATLANTIQUE
By THE TEXAS TRANSPORT & TERMINAL CO., INC.
General Agents for Pacific Coast.

.....SHIPPER

By

11/1

General Average payable according to York-Antwerp Rules, 1924, and Amendments, 1926, as to the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of damage or disaster resulting from faults or negligence of the navigation or management of the steamer or from latent or other defects or unseaworthiness of the steamer, whether existing at the time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the owner of the cargo shall not be exempt from paying his proportion in general average or salvage or any special charges incurred, but with the said exception shall pay general average and shall pay such special charges as if such damage, damage or disaster had not resulted from fault, negligence, latent or other defects or unseaworthiness. In case of General Average the consignee must sign an average bond and make a deposit of the approximate amount of such general charges if required by the agent.

The rate of freight is computed upon the basis of the following conditions and exceptions:

IT IS MUTUALLY AGREED, that the ship shall have liberty to sail with or without pilots; also to deviate and/or put for the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods; and in any the ship shall put into a port of refuge, or be prevented from any cause from proceeding by the ordinary course of her voyage to transship the goods to their destination by any other steamship; that the carrier shall not be liable for any claim whatsoever unless written notice thereof shall be given to the carrier upon removal of the goods from the ship or place of discharge. No suit for loss or damage shall in any event be maintainable against the carrier unless instituted within three months after giving written notice as above provided. In no event shall the carrier shall not be liable for loss or damage occasioned by the ship not being seaworthy when receiving; by barratry of the master or crew; by robbers, and/or pirates; land or sea; by arrest and restraint of princes, rulers or people, riots, civil[illegible] or seizure of ship; by collisions, [illegible] boilers, breakage of shafts, or any latent defects in hull machinery or appurtenances, [illegible] error, in judgment, any act, neglect or default whatsoever of pilots, masters or crew in the management or navigation of the ship, collisions and all and every other dangers and accidents of the seas, rivers and canal, and of navigation of whatever nature or kind, excepted or unascertainable of the ship, even existing at the time of shipment or sailing on the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; by heating, decay, putrefaction, risk, ginge, chafage, vermin, mildew, rats, spray, change of character, drainage, leakage, breakage or any loss or damage arising from the nature of the goods or in the insufficiency of packages; nor for land damage or damage by coal dust or for reasonable wear and tear or by contact with other cargo or any loss or for the obliteration, errors, insufficiency or damage of marks, or numbers, address of consignee; nor for risk of craft, hulk or transhipment; nor for any loss or damage caused by the [illegible] [illegible] and that [illegible] shall not be responsible as to correctness of statement, kinds, of weight, measure, quantity, contents and value. Fines, expenses and losses by detention of ship or cargo caused by incorrect markings or by incomplete or incorrect description of contents or weight or any other particulars required by authorities at ports of discharge upon either the package or bill of lading, shall be borne by the owner of the goods.

IT IS ALSO MUTUALLY AGREED that this shipment is subject to and has been made and delivered at, and all the exceptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to the navigation of vessels, etc."

This Bill of lading when issued covering traffic from a Canadian port is subject to all the terms and provisions of and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

1. In the event of claim for loss or damage, of whatever nature or [illegible] on whatever cause, for which the carrier may be liable, it is mutually agreed that the liability of the ship, and/or carrier for the loss, and/or damage, shall be based upon the net invoice value of the merchandise at the port of shipment, without any profit, commission, brokerage, interest, etc. It is also mutually agreed that the value of each package shipped hereunder does not exceed the sum of $100.00, on which basis the freight is adjusted, and the carrier's liability shall in no case exceed that sum, unless a value in excess thereof be specifically declared and stated herein and extra freight as may be agreed upon paid, and in the event of partial loss, and/or damage for which the carrier may be responsible, the liability to be pro rata to the sum payable in case of a total loss or damage, calculated in accordance with the above conditions.

2. ALSO, that the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof is given at the time of loading and entered in the bill of lading.

3. ALSO, that shippers shall be liable for any loss or damage to steamer or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

4. ALSO, that the carrier shall have a lien on the merchandise for all taxes, dues and fines imposed on it, and for all expenses to it resulting from the shipper's failure to furnish proper Consular or Customs House papers in due time, or resulting from other errors or omissions of shippers, and that all such fines and expenses shall be reimbursed to the carrier by consignee before the said property shall be delivered to him.

5. ALSO, in case of the entry of the port of discharge being interdicted, or communication therewith rendering or being liable to render the vessel liable to quarantine at that or any subsequent port, or in case of the master considering the entry of any port, either from epidemic or otherwise, unsafe or injurious to the further prosecution of the steamer's intended voyage, or in case of her preventing the steamer from reaching her port of discharge without delay, the goods may be landed or put into quarantine depot, lazaretto, hulk, lighter or other vessel or place necessary for the ship's despatch, at the Consignee's risk and expense, or the master may carry on the goods to the nearest port to which he is bound and there land them, and thereupon the shipowner's responsibility hereunder shall absolutely cease, and in the event of cargo being re-shipped to original destination from such port at which cargo is landed, the risk of such re-shipment, and all expenses, freight, etc., in connection therewith, to be for account of the owner of the goods. All quarantine expenses upon the goods, of whatever nature, are payable by the shipper or consignee. Also, that in case the ship shall be prevented from reaching her destination by quarantine, ice or blockade, the carrier may discharge the goods into the nearest available and safe depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon. Should the ship on arrival at destination be unable to enter port or discharging berth on account of ice, or frost, she shall have privilege of proceeding to nearest safe port or berth, and there discharge, freight to be paid the same as if discharged at port or berth to which she was ordered.

6. ALSO, that goods exceeding two tons in weight or measurement shall be liable to pay extra charges, if any for lighter, handling, transhipping or discharging. Also, that the steamer or any of the [illegible] servants of the company shall not be liable for any damage or loss occurring from any accident in lighter, handling, discharging or transhipping of packages exceeding two tons in weight. And in case of any damage or loss resulting to the steamer, cargo, lighters, steam or hoisting tackle, owing to incorrect weight having been declared, the shippers and/or consignees of such cargo shall be responsible for such loss or damage.

7. ALSO, that the steamer shall be entitled to commence discharging immediately on arrival, either in the river or at the quay, and discharge without interruption, and discharge at more than one berth. The goods shall be taken from the ship's tackle by the consignee of the goods directly on their coming to hand in discharging the ship, otherwise the master or ship's agent shall be at liberty to enter and land the goods, or put them in store, warehouse or craft, or on quay, at the receiver's risk and expense, without giving previous notice to consignees before weighing or counting, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all such and charges as aforesaid, notwithstanding all customs or regulations of the port of discharge to the contrary. The ship's responsibility shall cease immediately on the goods being discharged from the ship's tackle any custom of the port to the contrary notwithstanding. The Collector of the Port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The consignees of the cargo to receive same as above stated and wherever the steamer is lying, any custom of the port to the contrary notwithstanding. The master-porterage of the delivery of the cargo is to be done by the consignees of the steamer, at the expense and risk of the receivers of the cargo. Cargo landed without marks, with wrong ones, or wrongly marks, to be apportioned by Ship's agent (or master-porter) among the consignees of cargo whose lots may be short, such apportionment to be accepted by said consignees against shortage. Not accountable for condition of bagging or for sweaty damage. Tonnage and shut dues, and all expenses of measurer, weighing or examining cargo, even for determining amount of freight due on quantity, weight or number delivered, payable by receivers of cargo. Primage payable due to be for account of cargo. Also, that in the case of wood, cake, etc., the vessel shall not be responsible for marks, provided the number and the of bags is correct. Also, that if extra men are put on to assort marks of wood or cake, lumber stowed, etc., the expense thereof to be paid by the Consignee. The goods covered by this Bill of Lading shall be discharged into lighter or lighters at consignee's risk and expense, if, in the opinion of the steamer's agent, such method of delivery is advisable, notwithstanding any other condition in the Bill of Lading which may appear to conflict with this. Merchandise transhipped into vessels, lighters or other conveyance will have to reimburse to the ship, in the same measure as cargo landed on the shore, Chamber of Commerce dues taxes or other expenses in connection therewith, notwithstanding all customs and regulations of the port to the contrary.

8. The owner, [illegible] pursuant to the interpretation of the Bill of lading, may [illegible] part of the [illegible] consideration, shall be under no obligation to keep and/or load on [illegible] any [illegible] goods shipped by it in bulk shall, in the ordinary course of business, be mixed with goods of other shippers, such mixing shall not constitute a ground for delay [illegible] and the shipowner reserves the said goods for its own account, at the risk of, and all expenses [illegible] to be borne by the shippers and/or owner thereof. The carrier also [illegible] right to use [illegible] for the purpose of [illegible] and for the discharge [illegible] goods.

9. ALSO, that if any [illegible] of goods, [illegible] by freight and charges, the proceeds [illegible] such freight and charges, if any, shall be applied to reduce the aforesaid loss the [illegible].

10. ALSO, that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. ALSO, freight payable on barrels delivered full, partly full or empty.

12. ALSO, the steamer shall not be liable for splits, shakes or breakage to lumber or logs.

13. ALSO, that where goods is stowed together with other goods without separation, either [illegible] the owner of [illegible] agent, each Bill of Lading shall bear its proportion of loss and/or [illegible].

14. ALSO, all [illegible] on shore or in lighter awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the owner, master, agent or servants of the company as provided by law of the country [illegible].

15. ALSO, that this Bill of Lading, duly endorsed, be given up to the steamer's consignee in exchange for delivery order.

16. Prepaid freight is to be considered as earned upon shipment of the goods and is to be retained by the vessel owners, vessel or cargo lost or not lost at any stage of the entire transit, or if there be an enforced interruption or abandonment of a voyage or a part of thereof or elsewhere, and, in the event of the cargo or a part of it, being intercepted by vessels of the same or any other line, rate of forwarding shall be payable by the owners or consignees of the goods and shall constitute a lien on the goods.

17. ALSO, that if any bags of grain, coffee, cocoa, or similar cargo in bagged shall or lost, the consignee shall accept such proportion of the consignee as shall be allowed by the agents of the Steamship and the same shall be delivered in full satisfaction of any claim for loss in weight.

18. TRANSHIPMENT CLAUSE.—Transhipment of cargo for ports where the ship does not call, or for shipowner's purposes may be made by any other steamer or steamers to which as the shipowner deems it the shipowner's expense and subject to all conditions, stipulations and exceptions in the customary form of bill of lading or freight note in use at the time of the transhipment by the carrier or carriers completing the transit. The shipowner is not, and shall not be deemed to be the agent for such carrier or carriers nor shall the shipowner be liable in any regard whatever for any loss, damage or delay in regard to the goods other than may shall have left the shipowner's vessels and, in such cases the shipowner's responsibility shall cease. The goods shall be forwarded as soon as practicable, but the shipowner shall not be liable for detention[illegible] or even as [illegible] and the shipowner shall not be liable for detention and the risks and expenses of transhipping shall be borne by the goods, their owners and their consignees.

19. ALSO, owing to the conditions of war or hostilities, existing or threatened, this shipment is accepted at the sole risk of the owners thereof of arrest, restraint, capture, seizure, detention or interference of any sort by any Power; and the carrier and his representatives are privileged at his or their absolute discretion if deemed advisable for the protection of the vessel or any cargo or to avoid loss, damage, delay, expense or other disadvantage or danger, either with or without previous to or toward the port of discharge or calling or attempting to enter or discharge the goods there, and whether such entry or discharge be prohibited or not, to proceed to any other port or ports or return to the port of shipment, same or elsewhere, in any order or rotation, retaining the goods on board or discharging the same at risk and expense of the owners thereof at any such port or ports of the first or any subsequent call, and full bill of lading freight, together with extra compensation for additional transportation and all other charges, shall be paid by shipper, consignee and/or owner and shall be a lien on the goods.

20. PANAMA CANAL CLAUSE.—The steamer shall have liberty to proceed the Panama Canal, Straits of Magellan, or other route or routes and to change, proceed or return once or oftener from one to another; also to transship the goods through the Panama Canal or across the isthmus by railroad, craft or conveyance of any kind, by land or otherwise, by land and/or water, and to store and/or forward the same in hold, craft or elsewhere afloat or ashore and there transport or forward the same by the same or other vessel or carrier; also if steamer's passage through the Panama Canal is, or in the judgment of owner, master or agent is likely not to be immediately practicable without delay on arrival the goods may with or without proceeding to or toward the harbour be reshipped to and/or discharged at port of shipment or the harbour or other port convenient to the steamer, the voyage and carrier's responsibility being ended without notice or care of the goods here the ship's tackle, or the goods thence transported or transhipped to destination at steamer's expenses.

21. LONDON CLAUSE. (a) The shipowners shall, at their option, be entitled to land the goods while mentioned on the quay, or to discharge them into craft or lighters by them, immediately on arrival, and at consignee's risk and expense the shipowner being relieved of all liability for the same charges on goods entered for landing at the docks or on goods entered for delivery to lighters. Consignees desirous of conveying their goods elsewhere shall, on making application to the ship's agents, or to the dock company within 72 hours after steamer shall have been reported, be entitled to deliver into consignee's lighters at the following rates to be paid with the freight to the ship's agents against release, or to the dock company, if so desired by the ship's agents, viz: Following [illegible] goods in packages, timber pegs, goods handled inland rollers, bale, [illegible] wheels and cars, 1/3 per ton measurement; bags, 2/6 per ton weight; timber and logs, 1/- per ton measurement, or 2/6 per ton weight at ship's option, all other general cargo except those, 1/6 per ton weight or measurement at ship's option, minimum charge one ton. Those to pay 2/- per ton weight. Cheese may also be removed by consignee's own vessels any week other than that which they have been reported, subject to a 10% payment of 2/6 per ton weight, such ton to be taken loose in any and shipped weight weighing over one ton to be subject to extra charges for handling if insisted. All unmanifested freight to be paid upon the weight stated hereby or at ship's option upon being weighed if [illegible] has been ascertained, the cost of weighing to be a charge upon the goods. All deliveries of bagged and logs shall be considered as a weight note will be given for freight on the ordered weights forwarded at port of shipment. No allowance will be permitted in any weight or freight indicated in this Bill of Lading except at ship's option.

(b) Goods by consignee delivery is to be applied for within 24 hours of ship's docking, or thereafter [illegible] 24 hours notice, but in the absence of sufficient consignee's craft with reasonable promptitude to receive as fast as ship can discharge available into lighters during dock working hours, the consignee or agent may hire or discharge into lighters at the risk and expense of the consignee. The shipowner may land or discharge continuously day and/or night, any goods landed or discharged by ship's consignees during usual dock hours, consignee's craft being duly in attendance, and any goods that may be landed or discharged before or after usual dock hours, whether craft are in attendance or not, to be in charge of them by consignee's dock watchmen for which [illegible] 72 hours free of landing or discharge, afterwards it will be subject to the usual dock charges. An extra freight of 5d. per ton shall be paid by the shipowner on such consignments of goods whether any portion be landed or not. The goods to be weighed at time of discharge, either on dock and to quay and/or craft, at ship's option. Working out charges (including weighing) as fixed by the Port of London Authority for grain in both and/or steamer's tops to be paid by the consignees with the freight to the ship's agents or to the dock company, if so demanded by the ship's agents, in exchange for release.

(c) DAY, ILLUMINATING AND LIGHTERAGE OR CLAUSE. Consignees to have such in attendance immediately on ship's docking to take delivery from ship or quay at shipowner's option, working continuously day and/or night, quay to quay rate 1/6 per ton weight, or otherwise the goods will be put into consignee's craft, craft or wharfowner's risk and expense.

Dock [illegible] use by shipowners of [illegible] dock steam cranes and [illegible] shall rest free of demurrage their regular term to receive goods or goods as required by shipowners, either from [illegible] or quay or craft[illegible] goods.

These [illegible] clauses [illegible] to be a part of the Bill of lading, and any words or [illegible] with them are hereby cancelled.

22. SPAIN.—All duties stamps or which may be established by the Spanish Government on account of the consignments or upon the sum of Customs at port of destination.

23. ALSO, all differences or disputes arising out of or relating to the interpretation or to the execution of the present Bill of lading, and the claim thereof, will, by express agreement and even in case of appeal for necessity or of plurality of defendants, be judged in accordance with the decision of the arbitrators sitting in the Tribunal of Commerce of the Seine, the [illegible] of [illegible] shall [illegible] the [illegible] and [illegible] companies and except, and [illegible] [illegible] is hereby expressly given.

LIBELANT'S EXHIBIT NO. 18.
"THE GUIDE" ADVERTISEMENTS RE VOYAGES OF
VESSELS IN EUROPEAN-PACIFIC LINE,
June 7, 1919, to January 6, 1920.

1. S. S. "WEST ALETA" (1st voyage) was advertised continuously

For	From	To
Copenhagen direct	June 23, 1919 (first ad.)	August 8, 1919. (last ad.)

2. S. S. "CANSUMSET" was advertised continuously

For	From	To
Liverpool direct	June 23, 1919 (first ad.)	August 25, 1919 (last ad.)

3. S. S. "EELBECK" was advertised continuously from July 17, 1919 (first ad.) to Sept. 5, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	London and Liverpool	July 17, 1919	Aug. 23, 1919
San Francisco	London and Liverpool	Aug. 9, 1919	Sept. 5, 1919

4. S. S. "WEST CAYOTE" was advertised continuously

For	From	To
London and Havre	July 18, 1919 (first ad.)	Sept. 6, 1919 (last ad.)

5. S. S. "WEST KATAN" was advertised continuously

For	From	To
London and Havre	August 5, 1919 (first ad.)	Oct. 17, 1919 (last ad.)

6. S. S. "ORANI" was advertised continuously from August 25, 1919 (first ad.) to October 28, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	Liverpool direct	Aug. 25, 1919	Sept. 12, 1919
San Francisco	Liverpool direct	Aug. 25, 1919	Sept. 10, 1919
San Francisco	Liverpool and Glasgow	Sept. 11, 1919	Oct. 4, 1919
San Francisco	London and Liverpool	Oct. 6, 1919	Oct. 15, 1919
San Francisco	Liverpool and Glasgow	Oct 16, 1919	Oct. 28, 1919

7. S. S. "DEWEY" was advertised continuously from Sept. 11, 1919 (first ad.) to November 12, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	Liverpool direct	Sept. 11, 1919	Sept. 12, 1919
Seattle and Portland	London and Liverpool direct	Sept. 13, 1919	Sept. 30, 1919
San Francisco	London and Liverpool	Sept. 13, 1919	Oct. 4, 1919
San Francisco	London and Glasgow	Oct. 6, 1919	Oct. 15, 1919
San Francisco	London and Liverpool	Oct. 16, 1919	Nov. 12, 1919

8. S. S. "EFFINGHAM" was advertised continuously from October 16, 1919 (first ad.) to December 16, 1919 (last ad.) as follows:

From	For	From	To
Seattle and Portland	Antwerp and Hamburg	Oct. 16, 1919	Oct. 21, 1919
San Francisco	Antwerp and Hamburg	Oct. 16, 1919	Oct. 21, 1919
Seattle and Portland	Havre, Antwerp and Hamburg	Oct. 22, 1919	Oct. 29, 1919

San Francisco	Havre, Antwerp and Hamburg	Oct. 22, 1919	Oct. 29, 1919
Seattle and Portland	London, Liverpool and or Havre and Hamburg	Oct. 30, 1919	Nov. 3, 1919
San Francisco	London, Liverpool and or Havre and Hamburg	Oct. 30, 1919	Nov. 3, 1919
Seattle and Portland	London, Liverpool and Havre	Nov. 4, 1919	Nov. 18, 1919
San Francisco	London, Liverpool and Havre	Nov. 4, 1919	Nov. 18, 1919
San Francisco	Hamburg, London and Liverpool	Nov. 19, 1919	Dec. 16, 1919

9. S. S. "COCKAPONSET" was advertised continuously from October 30, 1919 (first ad.) to December 24, 1919 (last ad.) as follows:

For	From	To
Antwerp, Rotterdam and or Havre and Hamburg	Oct. 30, 1919	Nov. 3, 1919
Antwerp, Rotterdam, Hamburg	Nov. 4, 1919	Nov. 18, 1919
Havre, Antwerp and Rotterdam	Nov. 19, 1919	Dec. 24, 1919

[Endorsed]: United States District Court. No. 17,692. Libelant's Exhibit No. 18. Filed Jan. 6, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

CHARTS

TOO
LARGE
FOR
FILMING

January 20, 1920.
500 HFH: M.

Division of Operations,
United States Shipping Board,
369 Pine Street,
San Francisco, Calif.

Gentlemen:—

SS. "West Aleta."
Hamburg Bill of Lading #34:

This bill of lading originally covered a shipment of 2200 bags of rice on which the freight charges were assessed as follows:

222200# @ $2.25 per 100# $4999.50.

After the vessel had sailed the shippers surrendered the original document and at their request we have issued new bills of lading as follows:

34A—1100 Bags—111100# @ $2.25 per 100# $2499.75

34B— 550 Bags— 55550# @ $2.25 per 100# $1249.87

34C— 550 Bags— 55550# @ $2.25 per 100# $1249.88

These bills of lading all show Rosenberg Brothers & Company as the shippers. Bill of lading 34A is consigned to Order, Notify, Mr. Max N. Koester; bill of lading 34B is consigned to Order, Notify Mr. Geber Brady and bill of lading 34C is consigned to Order, Notify Messrs Uszczek and Grimpe.

We have notified the agent at destination of these corrections and would thank you to see that your copies of the freight papers are changed accordingly.

We are enclosing two copies of each corrected bill of lading to replace the documents already sent you.

January 20, 1920.

Division of Operations,
San Francisco, Calif.

#2—

Hamburg bill of lading #54 originally covered a shipment of 1100 bags beans. After the vessel had sailed the shippers surrendered the original document and at their request we split this shipment into two lots.

Bill of lading 54A for 141 bags—14241#
@ $2.30 per 100# ..... $ 327.54

Bill of lading 54B for 959 bags—96859#
@ $2.30 per 100# 2227.76

Both of these lots show Rosenberg Brothers & Company as shippers; bill of lading 54A being consigned to Order, Notify L. Behrens & Soehne and bill of lading 54B being consigned to Order, Notify C. Boecker & W. Berkefeld.

We have notified the agent at destination of these corrections and would thank you to see that your documents are changes accordingly.

We also enclose two copies each of the corrected bills of lading which are to replace the bills of lading previously delivered to your office.

Yours faithfully,
WILLIAMS, DIMOND & CO.,
By H.,
Managers and Operators.

Bill No.	Shipper	Marks	Consignee	No. Pkgs.	Articles	Weight	Rate	Freight	Adv. Chgs.	Total	Payable	Remarks

...District Court
No. 12692
Respondent's Exhibit No. C
Dec. 29, 1924
H. H. MALING, Clerk
...Deputy Clerk

RECAPITULATION

S. S. WEST ALSEA
VOY 51

	WEIGHT	CU FT	SH FT	FREIGHT	PREPAID	COLLECT
SEATTLE TO HAMBURG	739139	119		6154.51	6154.51	
SEATTLE TO ROTTERDAM	6...68		76895	20054.59	20054.59	
SEATTLE TO CARDIFF			736134	13568.04	13568.04	
SAN FRANCISCO TO HAMBURG	8001939	345		40599.60	40599.60	
SAN FRANCISCO TO ROTTERDAM	2375084			22913.514	22909.13	384.38
SAN FRANCISCO TO CARDIFF	5609931			119966.38	119966.38	
TOTAL	10950961	464	1029987	255176.45	253...07	384.38

CERTIFIED TO BE A FULL AND TRUE STATEMENT OF ALL CARGO LADEN AND THAT RATES ARE CORRECT AND AUTHORITY FOR WHICH ARE PACIFIC COAST EUROPEAN TARIFF NO. 24 WITH SUPPLEMENTS NOS 3 AND 4.

WILLIAMS DIMOND & COMPANY
MANAGERS AND OPERATORS

BY _____
MEMBER OF FIRM.

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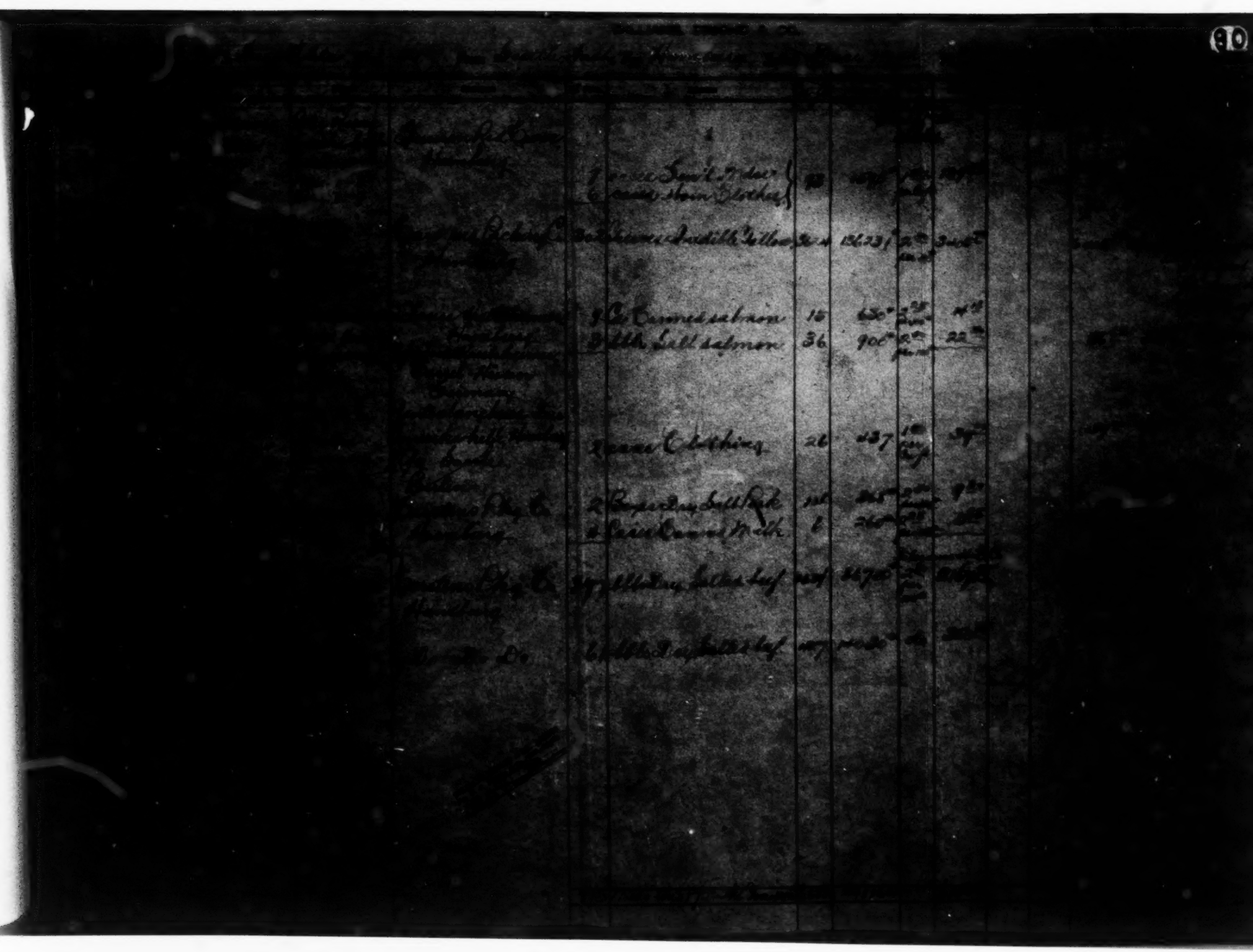

Dec 19[illegible]

WILLIAMS, DIMOND & CO.

S.S. Nant Celta Voy. 51 From Seattle, Wash. For Cardiff. Sailed Dec. 19th 1917 Arrived 19 Sheet No. 92

B/L No.	Shippers	Marks	Consignees	No. Pcgs.	Articles	Weight	Rate	Freight		Adv. Chgs.	Total	Prepaid	Remarks
601-S	G.R. Crowley	A Crown	C/O Hunt Bros & Co Cardiff, Wales	3593	Hard wood Timber	49454 lbs 22.15 M.	Cardiff London	2846.87			2846.87	2846.87	Ships not responsible for shifting of cargo under deck
601-S	G.J. Ramsey & Co. Abertridwr Aut	Ramsey	Care G.J. Ramsey & Co. Cardiff. Ltd G.J. Ramsey & Co. London Eng	1431	Do Do	9.945 22.15 M.	Do	5.67			591.75	591.75	Do
602-S	Do Do	Do	Do Do	1213	Do Do	5041 22.15 M.	Do	287.37			150.00	150.00	Do
				Cargo	4687 mos Timber	270.21.13		2613.7 22.15 M.			1355.62	1355.62	

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WILLIAMS, DIMOND & CO.

S. S. WEST ALETA Voy. 91 From SAN FRANCISCO For [illegible] Sailed [illegible] 1919 19 Arrived 19 Sheet No. 93

B/L No.	Names	Marks	Consignees	No. Pcks.	Articles	Gross Weight	Rate	Freight	Adv. Charges	Total	Remarks
1	CARL KLAGE	ADDRESSED	[illegible]	1	[illegible]	95	[illegible]	[illegible]		[illegible]	
2	BENJ. ROTHBACH	DO	CARL LUDWIGER DIRSCHAU, POLAND	1	DO DO	66	[illegible]	[illegible]		[illegible]	
3	SAMUEL SHUP	DO	FRAU HETTIE HOWES [illegible]	1	DO DO	199	[illegible]	[illegible]		[illegible]	
4	BENJ. ROTHBACH	DO	HERR LEINGTHER, ELOTHOFF, POLAND	1	DO DO	67	[illegible]	[illegible]		[illegible]	
5	MARCUS FEINBERGER	DO	ANNETTE GOLDFISHER, [illegible]	2	DO [illegible]	98	[illegible]	[illegible]		[illegible]	
6	HAAS BROS	DO	[illegible]	1	DO [illegible]	6	[illegible]	[illegible]		[illegible]	
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]			
				1	DO [illegible]		[illegible]	[illegible]		[illegible]	
7	CARL KALTEA	DO	CHRISTIAN [illegible]	1	DO [illegible]	200	[illegible]	[illegible]		[illegible]	
8	HERMAN GUMPEL	DO	SAMUEL GUMPEL, BRESLAU 1/20	6	DO [illegible]		[illegible]	[illegible]		[illegible]	
				10	DO [illegible]		[illegible]	[illegible]			
				1

WILLIAMS, DIMOND & CO.

S. S. [illegible] Voy. 50 From [illegible] For [illegible] Sailed 19 [illegible] Arrived 19 [illegible] Sheet No. [illegible]

B/L No.	Shipper	Marks	Consignee	No. Pkgs.	Articles	Cubic Feet	Weight	Rate	Freight	Adv. Chgs.	Total	Prepaid	Remarks
	BROUGHT FORWARD					931	399971		$9949.52		$9949.52	$9949.52	
31	[illegible] PINE CO/ INC.	VARIOUS	[illegible] & Co. [illegible]	100	CS CALIFORNIA PINE		97.0	2.00	194.00				
				150	1000 BDL. CALIFORNIA PINE		79.000	7.90	1950.00		2108.00	2108.00	
29	[illegible] BAUTH[illegible]	ADDRESSED	[illegible]		CS BUTTER								
					CS [illegible]		42	MIN.	10.00		10.00	10.00	
					CS [illegible]		44						
					CS COFFEE								
					CS CANNED MILK								
33	B. C. BREMER	do	H. BREMER, ALTONA		CS MARGARINE		469	MIN.	10.00		10.00	10.00	
34	C. H. WHITNEY COMPANY	do	[illegible]		CS [illegible] PASTE								
					CS SOUP								
					CS [illegible]								
					CS C.C.C.								
					CS CHOCOLATE								
					CS Cod. Fish & Milk								
					CS MISC								
					CS Cod. Fish & Dried								
					CS Cod. Herring								
					CS Cod. Tongues								
					CS Mixed Groceries								
35	C. H. WHITNEY COMPANY	do	[illegible]		CS MARGARINE PASTE								
					CS SOAP								
					CS [illegible]								
					CS [illegible]								
					CS CHOCOLATE								
					CS [illegible]								
					CS [illegible]								
					CS Cod. Fish & Dried								
					CS MISC								
					CS Cod. Fish & Dried								
					CS Cod. Tongues								
					CS Mixed Groceries								
36	J. GROSER	VARIOUS	[illegible]		CS GROCERIES								
					CS GROCERIES								
37	[illegible]	V. O. [illegible]	[illegible]		CS PEPPER & [illegible]								
					CS [illegible]								
					CS [illegible]								
					CS

WILLIAMS, DIMOND & CO.

S. S. WEST ALETA Voy. 50 From SAN FRANCISCO For HAMBURG ✓ Sailed 19— Arrived 1910 Sheet No. 35

B/L No.	Shipper	Marks	Consignee	No. Pkgs	Articles	Cubic Feet	Weight	Rate	Freight		Adv. Charges	Total	Prepaid	Remarks
	BROUGHT FORWARD					269	478711							
32	CALIFORNIA WINE ASSOCIATION	ADDRESSED	ORDER NTFY. HEINRICH EDELMANN LILIENTHAL, BEI DAMEN, GERMANY	9	BBLS. CAL. WINE		1500	2.40	36.00			36.00	36.00	
33	H. H. KOHLTMANN	DO	H. PILLY HOLST, EISENBAHNS	1	CS. USED CLOTHING	12		1.40%	CFT. 19.50			19.50	19.50	
34	ROSENBERG BROS. & CO.	S T 357	ORDER NTFY. MESSRS. G. SCHEIER & SCHEFFELD HAMBURG	2200	DOUBLE BAND RAGS SOMETHINGS		207800	2.25	4999.50			4999.50	4999.50	Loss [illegible]
35	DO	S E 348	ORDER NTFY. MESSRS. G. SC.	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
36	DO	S L 349	DO	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
37	U. S. STEAM CO.	F. A. CO. 5695	ORDER NTFY. FERD ASSMUSEN & CO. COPENHAGEN	500	DO		59400	2.25	1138.50			1138.50	1138.50	
38	STRONG BROLL & CO.	H. P. C/O AUGUST DOHSE HAMBURG	AUGUST DOHSE, EISENBAHNEN U. SCHIFFAHRTS AGENTEN HAMBURG	1 1 1 1 1 1 1	CS. CANNED BEAN CS. CANNED SALMON CS. JAMS CS. CANNED CS. SOAP CS. RICE CS. CANNED PEAS	9 9 9 9 40		2.40 2.25						
39	ROSENBERG BROS. & CO.	S E 357	ORDER NTFY. MR. L. SCHEIER HAMBURG	2200	DOUBLE BAND RAGS		207800	2.25	4999.50			4999.50	4999.50	
40	DO	S E 350	ORDER NTFY. G. SCHEIER & SCHEFFELD HAMBURG	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
41	DO	S E 356	ORDER NTFY. ROSEN & SCHEFFEL	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
42	DO	S E 356	DO	500	DO		59400	2.25	1138.50			1138.50	1138.50	
43	DO	S E 470	DO	1 1 1 1 1 1 1	CS. CANNED BEAN CS. CANNED SALMON CS. JAMS CS. CANNED CS. SOAP CS. RICE CS. CANNED PEAS	9 9 9 9 40		2.40 2.25						
44	DO	S E 470	DO	2200	DO		207800	2.25	4999.50			4999.50	4999.50	
45	DO	S E 340	DO	1400	DO		111600	2.25	2499.75			2499.75	2499.75	
46	SPERRY FLOUR COMPANY	ALTONA OFFICE	ORDER NTFY. G. VON HEIDEN	1	BBL. FLOUR		200	2.25	4.50			4.50	4.50	
47	WM. L. SPRAGUE	BENTSONE SCHIFFAHRTS	OTTMER, SCHILDS & SCHLOSSPLATZ	1	CS. MERCHANDISE	21		1.40%	CFT. 29.43			29.43	29.43	
48	AUGUST DANIEL	P DANIEL 1/3	P DANIEL BERLIN GERMANY	1	DO	9		1.40%	CFT. 12.60			12.60	12.60	
49	HAAS BROTHERS	ADDRESS	FRAU JACOB STEINLEN SPITTLERSTRASSE 5 HAMBURG GERMANY	1 1 1 1 1 1 1	UPPER FLOOR CS. CANNED TOMATOES CS. CANNED PEAS CS. CANNED STRING BEANS CS. RICE CS. CANNED BEANS	150 [illegible]								
50	DO	ADDRESSED	F. THIEST & SONS HAMBURG DAFFINS	1 1 1 1 1 1 1	UPPER FLOOR CS. CANNED TOMATOES CS. CANNED PEAS CS. CANNED STRING BEANS CS. RICE CS. CANNED BEANS	150 [illegible]		10%	10.00			10.00	10.00	
51	DO	ADDRESSED	FRAU JACOB HAAS AUGUSTA ANLAGE 44 HAMBURG GERMANY	1 1 1 1 1 1 1	UPPER FLOOR CS. CANNED TOMATOES CS. CANNED PEAS CS. CANNED STRING BEANS CS. RICE CS. CANNED BEANS	150 [illegible]		10%	10.00			10.00	10.00	
52	C. L. JONES & COMPANY	ADDRESSED	C/O JOSEPH HERRADNER HOTEL BRISTOL BERLIN GERMANY	1	CS. SAMPLES, TIN, P SEE COPPER CANS, BOOKS, BEANS, WIRE, JARS, BEANS, POWDER	10	100	3.75	3.75			3.75	3.75	
53	BARBARA ROSENBERG BROS. & CO.	S D 357	ORDER NTFY. G. SCHEIER & SCHEFFELD HAMBURG	999	BAGS TEXTILE BEANS		99899	2.50	2497.25			2497.25	2497.25	
54	DO	S S 347	DO	1400	DO		111600	2.50	2791.50			2791.50	2791.50	Loss [illegible]
55	DO	S M 346	DO	1400	DO		111600	2.50	2791.50			2791.50	2791.50	
						269	478711		[illegible]			[illegible]	[illegible]	
									37946.10			37946.10	37946.10	

WILLIAMS, DIMOND & CO.

S. S. WEST ALETA Voy. 51 From SAN FRANCISCO For HAMBURG Sailed JANUARY 7TH 19 19 Arrived 19 -- Sheet No. 96

A/C No.	Shippers	Marks	Consignees	No. Pkgs.	Articles	Gross Weight	Rate	Freight	Ass'd Chgs.	Total	Forwarded	Remarks
			BROUGHT FORWARD									
56	ROSENBERG BROS & COMPANY	S S 498	ORDER NOTIFY BANNE & HAASE	595	BAGS RICE	57185						
				50	"	4836	2.25	904.84		904.84	904.84	
57	"	S S 498	"	500	"	50900	2.25	1136.25		1136.25	1136.25	
58	"	S S 498	"	500	"	57900	2.25	1248.75		1248.75	1248.75	
59	"	S S 498	"	500	"	57900	2.25	1248.75		1248.75	1248.75	
60	HANS TAUBERT	ADDRESSED	LEO TAUBERT, HAMBURG	1	BX GROCERIES	200	MIN.	10.00		10.00	10.00	
61	O. ROTHE	ADDRESSED	A. AUSTNER, HAMBURG	1	BX SUGAR	100						
				1	BX DRIED FRUITS	20	2.50	2.75				
				1	BX SO MILK	60	2.10	1.26				
				1	BX SOAP	20						
				2	BX CEREALS	200	2.50	5.75				
				1	BX RICE	75	2.25	.68				
				1	CHT LARD	50	2.40	1.20				
				1	BX WHEAT FLOUR	100	2.15	2.15		15.07	15.07	
62	HAAS BROS.	ADDRESSED	E.T.PHIELMANN, BERLIN	3	CS TYPEWRITER BOOKS CLOTHING	19		1.625	24.38	24.38	24.38	
63	HAS HANNOVER	ADDRESSED	ARNO HAUPICH, SARA Rubber	2	BX MERCHANDISE	7		1.625	11.38	11.38	11.38	
64	DEUS VAN DIELEN & COMPANY	D E S 25	ORDER NOTIFY UNITED EXPORT CO	1480	BAGS RICE	149480			WEIGHT & CHGS AHEAD O/L CO.,COPENHAGEN VOY 50			
65	ROSENBERG BROS & COMPANY	D E 115	FEAD. ANDERSON & CO.,COPENHAGEN	154	CO	15708			WEIGHT & CHARGES AHEAD O/L CO.,COPENHAGEN VOY 5			
				585								
						2,001,939						

WILLIAMS, DIMOND & CO.

S. S. [illegible] Voy. [illegible] From [illegible] For [illegible] Sailed 19[illegible] Arrived 19[illegible] Sheet No. 97

B/L No.	Shipper	Marks	Contents	No. Pcs.	Articles	Weight	Rate	Prepaid		Adv. Charges	Taxes	Freight	Remarks
1	CALIFORNIA CANNERIES CO.	827 ROTTERDAM	ORDER. NOTIFY [illegible]	1 125 60 5	Cs. CANNED PEARS Cs. CANNED PEARS Cs. CANNED [illegible] Cs. CANNED PEARS	1400 7750 3750 550	1.00	247.50			247.50	247.50	
2	GATZ AMERICAN COMPANY INC	G P C G R C R	ORDER NOTIFY GATZ BROS.	2000	[illegible] BAGS CAL. APP PEAS	240000	2.40	4040.00			4040.00	4040.00	
3	CALIFORNIA FRUIT ASSOCIATION	P R ROTT BUAS 2501 2000	ORDER NOTIFY PLUMS & PEAR LTD.	500	1/2 Cs. CAL. PEAR	24000	2.75	1646.27			1646.27	1646.27	
4	CALIFORNIA FRUIT ASSOCIATION	P R GENOVA VIA ROTTERDAM I 108	ORDER NOTIFY PLUMS & PEAR LTD.	500	1/2 Cs. CAL. PEAR [illegible]	40000	2.35	1175.00			1175.00	1175.00	
5	ALBERT BALS. MILLING CO.	P. V. ARNHEM VIA ALBERTS A/B DELFT	ORDER/ALBERT BROS. MILLING CO. NOTIFY P N/ AMSTERDAM	300	Cs. ALBERTS ROLLED OATS	9000	2.25	202.50			202.50	202.50	
6	ROSENBERG BROS. & CO.	I Z 199	ORDER NOTIFY BACHMANN & ROTHSCHILD	500	[illegible] BAGS RICE	50000	2.00	1000.00			1000.00	1000.00	
7	ROSENBERG BROS. & CO.	I Z 199	ORDER NOTIFY BACHMANN & ROTHSCHILD	500	[illegible] BAGS RICE	50000	2.00	1000.00			1000.00	1000.00	
8	ROSENBERG BROS. CO.	W. V. 276	ORDER NOTIFY BACHMANN & ROTHSCHILD	440	SAK RICE	44000							[illegible] ASSIGNMENT [illegible] TO THE ORDER OF [illegible] AND B/L TO BE [illegible] TO ORDER.
9	D. GOMBARG JR.	B F I [illegible]	[illegible]	8	BOXES OIL HIDES	400							
10	ROSENBERG BROS & CO.	I Z 343	ORDER NOTIFY BACHMANN & ROTHSCHILD	250	BAGS RICE	24000	2.00	480.76			480.76	480.76	
11	THE SAMUEL COMPANY	LEO SCHMAL JANSSTR 252 40	ORDER PD. PLUMS PLEASE NOTIFY ROTTERDAM	4 6	Cs. SWEET WINE Cs. DRY WINE	240 360	0.27	33.48			11.47	11.47	
12	CALIFORNIA FRUIT ASSOCIATION	P R ROUT 1101 50 1 5050	ORDER NOTIFY PLUMS & PEAR LTD. ROTTERDAM HOLLAND	700	BALS. CAL. PEAR	35000	2.25	1837.50			1837.50	1837.50	
13	DO	P R 101 300	DO	800	DO	40000	2.25	1837.50			1837.50	1837.50	
14	DO	P R ROTTERDAM	DO	800	DO BAGS	32000	2.25	2201.25			2201.25	2201.25	
15	DO	P R ROTTERDAM	DO	67	BALS. DRIED	2680	2.25	270.75			270.75	270.75	
16	DO	P R ROTTERDAM	DO	800	DO	40000	2.25	2202.50			2202.50	2202.50	
17	DO	P R ROTTERDAM	DO	800	DO	32000	2.25	2202.50			2202.50	2202.50	
18	DO	P R 1300 1740	DO	240	BALS. CAL. PEAR	24000	2.25	1237.50			1237.50	1237.50	
19	DO	P R 301/1000	DO	1000	BALS CAL. PEAR	48000	2.25	2475.00			2475.00	2475.00	
20	S. L. JONES & COMPANY	D P E D P D P E D E D P E E E	ORDER S. L. JONES & COMPANY NOTIFY CANNING BROKERS & CO., AMSTERDAM	25 25 6	DS RAISINS DS RAISINS DS RAISINS	2500 2500 600	2.25	375.25			375.25	375.25	
21	ROSENBERG BROS. & CO.	I Z 343	ORDER NOTIFY BACHMANN & ROTHSCHILD	250	BAGS RICE, PAPER	25000	2.00	375.24			375.24	375.24	
22	GATZ AMERICAN CO.	VARIOUS	SHIPPERS ORDER NOTIFY GATZ BROS	84	DS RAISINS	19975	2.00	354.00			354.00	[illegible]	[illegible]
23	GETZ BROS & COMPANY	LIQUORS	ORDER GETZ BROS & CO., LTD., NOTIFY SEL LIQUORS, AMSTERDAM	40	DS DO SALMON	2400	2.00	55.00			55.00	55.00	
				[illegible]		1,377,264		45,713.27			45,713.27	[illegible]	

[illegible] 45,713.27

22

S. S. WEST ALEXIS Voy. 57-47 From [illegible] For [illegible] Sailed [illegible] 19[illegible] Arrived [illegible] 19[illegible] Sheet No. 98

S.L. No.	Shippers	Marks	Consignees	No. Pcks.	Articles	Weight	Rate	Freight		Advances	Weight	Freight	Remarks
1	PAUL WOODS	S F P & CO	ORDER NOTIFY, AGENT S FRANCISCO	450	CASES FRUIT								
2	CALIFORNIA FRUIT ASSOCIATION	F S [illegible]	ORDER NOTIFY, FRUIT & NUT EXCH.	600	"								
3	"	F S [illegible]	"	1200	"								
4	"	F S [illegible]	"	1200	"								
5	"	F S [illegible]	"	1200	"								
6	"	F S [illegible]	"	1200	"								
7	"	F S [illegible]	"	1200	"								
8	"	F S [illegible]	"	1200	"								
9	"	F S [illegible]	"	1200	"								
10	"	F S [illegible]	"	1200	"								
11	"	F S [illegible]	"	1200	"								
								[illegible]				[illegible]	

CHART

TOO

LARGE

FOR

FILMING

RESPONDENT'S EXHIBIT "E."

SURVEYOR'S CERTIFICATE.

Dated, San Francisco, January 6th, 1920.

This is to Certify That the "WEST ALETA" of 5719 tons gross register, of which G. H. Ewart is Master, has been loaded at this port, under my supervision, with the following cargo destined for Hamburg, Rotterdam, Cardiff via Panama Canal.

Particulars of Cargo.

Hamburg 1123 tons general mdse.
Rotterdam 1671 " " "
Cardiff 3221 " " "

Draft and Freeboard.

Draft forward 19 ft. 7 in. Aft 22 ft. 7 in. Freeboard 8 ft. 9 in.

Allowances ——— ——— ———
In saltwater 19 ft. 7 in. Aft. 22 ft. 7 in. 8 ft. 9 in.

Fuel Supply, Daily Consumption and Av. Speed as Reported.

Quantity and Quality—5542 barrels oil.

Daily Consumption—210. Av. Speed in good weather—10½ Knots.

No. of days fuel—26. Distance to first fuel port—3300.

Water in Ballast Tanks ———Tons. Fresh Water —200 Tons.

Remarks.

947 tons lumber and bean oil taken in at Seattle.

All holds examined where possible and found in good clean condition, bilges reported carefully ex-

amined and found clean, pumps reported in good working order.

The undersigned having this day made final survey of above named vessel certifies that the vessel is very carefully dunnaged and stowed and weights properly distributed, and all hatches battened down with three good dressed tarpaulins on each and that the vessel is, therefore, in every way seaworthy for voyage contemplated.

Surveyed at request of—

WILLIAMS DIMOND COMPANY.

JOHN W. RINDER,

Surveyor.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "E." Filed Dec. 30, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

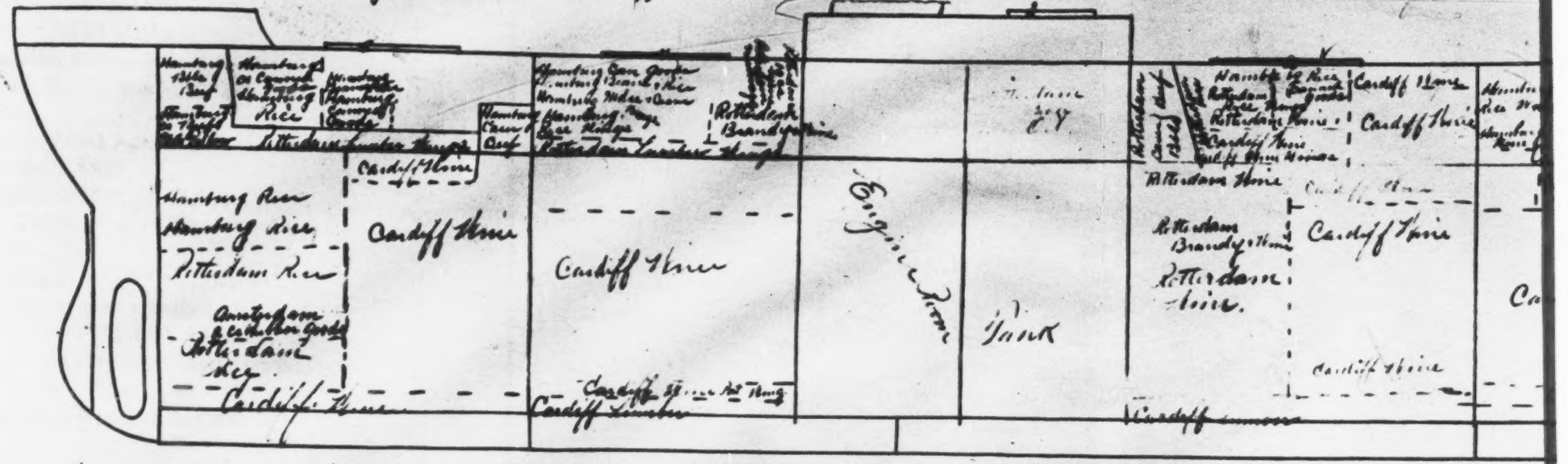
No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

DEADWEIGHT 5500 TONS
CUBIC CAPACITY
Bale 415549
Grain 464041
SUMMER DRAFT 24 FT. 1½ IN.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPO

CARGO STOWAGE PLAN S.S. West Aleta VOYAGE 2 SAILING FROM San Francisco DATE

FOR Hamburg Rotterdam Cardiff. OPERATOR Williams Dimond & Co STEVEDORE CO. Calif. Stevedor



INDICATE POSITION OF ENGINES, BULKHEADS BETWEEN HOLDS, 'TWEEN DECKS, AND HATCHES

TOTAL D. W. TONS ON BOARD ON SAILING	Tons
CARGO	5376
WATER BALLAST	360
BUNKERS	773
FRESH WATER	228
DUNNAGE	160
STORES AND SPARE MATERIAL Dunnage	200
TOTAL DEADWEIGHT	6917
TOTAL MEASUREMENT TONS CARGO	

DRAFT WHEN SAILING	Mean
SALT WATER FORE 23 FT. 6 IN. AFT 25 FT. 8 IN.	24' 7"
FRESH WATER FORE FT. IN. AFT. FT. IN.	

REMARKS: West Aleta moored from San Francisco to Point San Pablo 12/29/19 at 3 PM assisted by one tug. Moored at 4 P.M.
Moored from Point Pablo to San Francisco 1/1-20
Arrived at 12 M assisted by One tug.
Space L.D. 250 Tons 1 Holed
" L.H. 175 " " " "
" U.D. 25 " " " "
" U.D. 12 " 5 "

116½ Tons Total

17692

Respondents Exhibit No. F.
Dec. 30, 1924
H. B. MALING, Clerk
J. A. Schwartz Deputy Clerk

RECORD OF TONNA

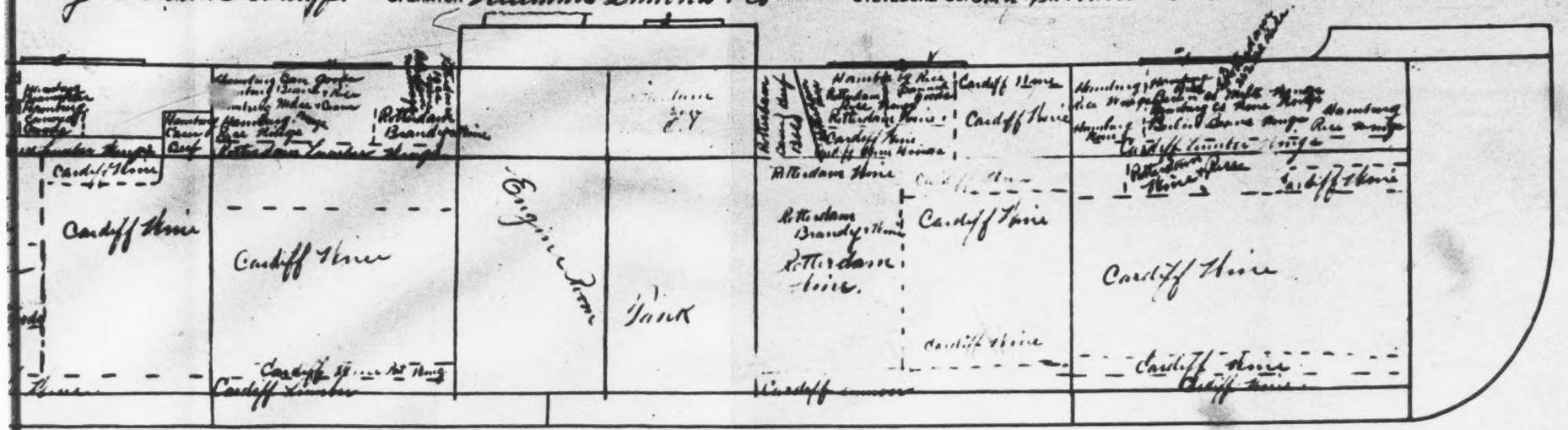
DATE	TONS
12/26 19	
12/29 19	
12/29 19	
12/29 19	
12/30 19	
12/31 19	
1/3 20	
1/3 20	
1/5 20	
1/6 20	

NOTE.—ALL INFORMATION PERTAINING TO CARGO SHOULD BE NOTED UNDER HEADING "REMARKS;" MAKE MENTION OF ALL SINGLE LIFTS WHICH CAN NOT BE HANDLED BY SHIP'S TACKLE, GIVING WEIGHT AND MEASUREMENTS OF SAME; ALL SPECIAL, VALUABLE, DANGEROUS, OR INFLAMMABLE CARGO, AND LOCATION OF SAME; ALSO AVAILABLE FREE SPACE AND WHERE LOCATED.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

STOWAGE PLAN S. S. West Aleta VOYAGE 2 SAILING FROM San Francisco DATE Jan 6 1920

Hamburg Rotterdam Cardiff. OPERATOR Williams Dimond & Co STEVEDORE CO. Calif. Stevedore & T Co



INDICATE POSITION OF ENGINES, BULKHEADS BETWEEN HOLDS, 'TWEEN DECKS, AND HATCHES

REMARKS: West Aleta moored from San Francisco to Pond Str. Pablo 12/29/19 at 3 P.M.
assisted by one tug. Moored at 5 P.M.
Sailed from Str. Pablo to San Francisco 1/2-20
moored at 12 M assisted by One tug.

Space	L.D.	250	Tons	Hatch
"	L.H.	175	"	"
"	U.D.	25	"	"
"	U.D.	12	"	"

461/2 Tons Total

United States District Court
17692
Respondent's Exhibit F.
Dec. 30, 1924
WM. B. MALING, Clerk
J. A. Schmitz Deputy Clerk

RECORD OF TONNAGE HANDLED DAILY

DATE	TONS LOADED	WEATHER
12/26-19	610	Fair
12/27-19	644	"
12/29-19	688	"
12/30-19	670	"
12/31-19	976	"
1/1-20	723	"
1/2-20	398	"
1/3-20	160	"
1/5-20	220	"
1/6-20	30	"

PORT San Francisco PIER No. 25
COMMENCED LOADING Dec 26-19
FINISHED LOADING
SHIFTED to Str. San Pablo Dec 29-19
SAILED

PORT San Francisco PIER No. 25
COMMENCED LOADING 1/2 - 1 P.M.
FINISHED LOADING Jan 6 - 20
SHIFTED to San Francisco Jan 8 - 20
SAILED

PORT PIER No.
COMMENCED LOADING
FINISHED LOADING
SHIFTED
SAILED

ACTUAL TIME CONSUMED IN LOADING
10 DAYS HOURS MINS.
AVERAGE TONS LOADED PER MAN HOUR

NOTE.—ALL INFORMATION PERTAINING TO CARGO SHOULD BE NOTED UNDER HEADING "REMARKS;" MAKE MENTION OF ALL SINGLE LIFTS WHICH CAN NOT BE HANDLED BY SHIP'S TACKLE, GIVING WEIGHT AND MEASUREMENTS OF SAME; ALL SPECIAL, VALUABLE, DANGEROUS, OR INFLAMMABLE CARGO, AND LOCATION OF SAME; ALSO AVAILABLE FREE SPACE AND WHERE LOCATED.

17692
Respdts. Exhibit F.
Sketch of Interior
S/S West Aleta

4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON,
CLERK.

March 8, 1920.

BILL OF LADING CORRECTION:
SS. "EFFINGHAM"—Voyage 50.

San Francisco—Balboa Bill of Lading #1.
Shipper—W. R. Grace & Co.
Marks—None.
Consignee—Panama Agencies Co.
Shipment—Bulk Oil.

Billed as	5926.69 bbls.	@ 65¢ per bbl....	$3852.35
Out-turn	5773.85 "	" 65¢ " " ...	3753.00
To Be Deducted	152.84 "	"	99.35

Run ticket of out-turn attached.

WILLIAS, DIMOND & Co.
By HOWARD TRUSLOW,
Auditor.

Checked Against Manifest and Found O. K.
C. R. M.,
In Charge of Freight Accounts.

Comptometer—L. M.

Triplicate.

PANAMA AGENCIES COMPANY
FUEL OIL DEPT.

Copy.

Run Ticket No. 713.

Balboa, C. Z. January 1st, 1920.

DIESEL Oil Rec'd at Oil Crib from S. S. "EFFINGHAM" owned by U. S. S. B. E. Fleet. Agents Panama Agencies Co. from tank No. 10 on Thursday 1.1.1920. from 2.00 o'clock P. M., to 9.00 o'clock P. M.

2nd gauge 21 ft. 2¼ in. 17704.95 bbls.
1st gauge 14 ft. 2½ in. 11872.78 bbls.

TEMPERATURE 85 deg. Fahr.
BAUME 26.3 deg.

Gross Oil 5832.17 bbls.
Net Oil @ 60 deg. Fahr. 5773.85 bbls.

ORDER No.....

MARC D. MEZA,
Gauger Panama Agencies Co.
H. E. GREENWOOD,
Gauger "PANAMA CANAL"

.....
Captain S. S. "EFFINGHAM"

.....
Chief Engineer S. S. "EFFINGHAM"

[In pencil:] 3753.00—Freight to Collect. B.

Copy to:
Captain
Owners
Panama Office
San Francisco

5773.85 Bbls.

COPY.

December 1st, 1919.

Messrs. Williams, Dimond & Co.
310 Sansome Street,
San Francisco, Calif.

Gentlemen:

Attention of Mr. Fred Hooper:

CARGO DIESEL OIL PER SS. "EFFINGHAM"

We agree to deliver to the SS. EFFINGHAM at San Francisco approximately 6000 barrels of Diesel Oil to be carried as freight in the vessel's deep tanks to Balboa, C. Z., and there delivered at the Government Oil Crib to Tank No. 10 via Panama Canal Pumps. It is understood that this oil is to be delivered to the vessel at San Francisco at such a time that no delay will be occasioned in loading.

It is understood that freight will be payable at the rate of 65¢ per net barrel on the quantity of Diesel Oil delivered at Balboa as determined by the official gauges of the Panama Canal; also that the ship will pay for any of this oil retained on board at the Shipping Board rate for Fuel Oil at Cristobal on the date of shipment. The vessel will pay for any of this cargo oil consumed as bunkers between San Francisco and Balboa at the established Panama Canal rate for Diesel Oil at Balboa on the date of shipment.

Freight will be payable in San Francisco on receipt of cable advices of the quantity delivered at Balboa.

In the event of a constructive total loss of the vessel and/or cargo mentioned herein, we agree to pay freight on the total net barrels placed on board at San Francisco.

We agree to discharge and take delivery of this oil at Balboa at the rate of 800 barrels per hour, time being calculated from the hour the vessel commences pumping to the hour pumping is completed, failing whch we agree to pay demurrage at the rate of $1.00 per net registered ton per day, it being understood, however, that we will not be required to pay demurrage in the event that there is no actual delay to the vessel in transitting the Canal.

It is mutually understood and agreed that the ship's pumps are to be at our disposal under the direction of the Chief Engineer of the vessel, who is to be instructed by you to co-operate with us and render all possible assistance in expediting handling.

We further agree to reimburse the ship for any port, piloting or wharfage charge incurred directly on account of the fact that the vessel is carrying cargo Fuel Oil and which could not be incurred should the vessel transit the Canal without docking at the Government Oil Crib, Balboa, for the purpose of discharging this cargo oil.

This agreement is subject to the usual clauses of the United States Shipping Board's bill of lading.

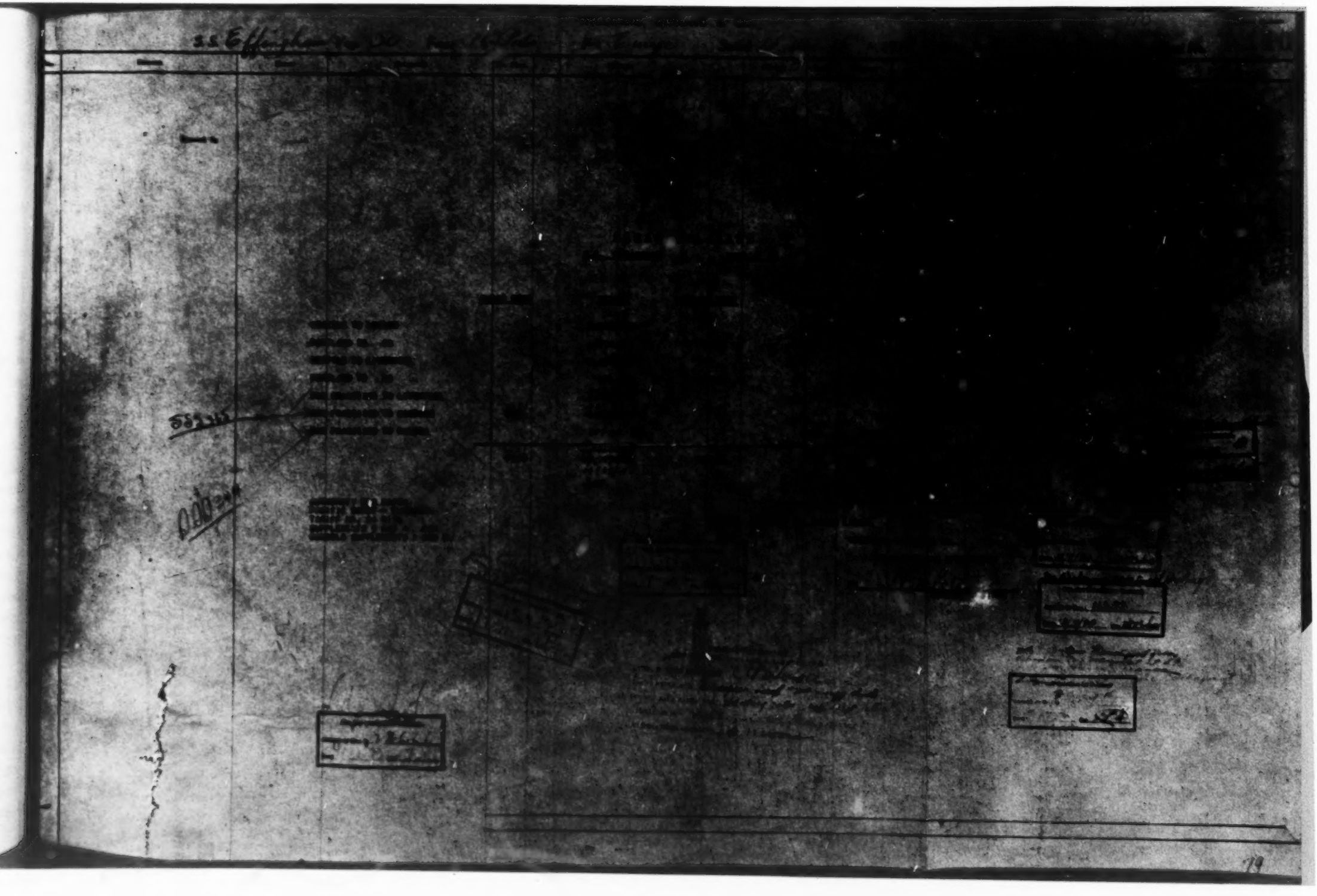
In the event that a berth is not available or we are not in a position to receive oil on the steamer's readiness to discharge we agree to pay demurrage at the rate specified above from the hour the vessel is in readiness to discharge until pumping com-

mences providing, as above, that actual delay in transmitting the Canal is thus occasioned.

We are sending you this letter in duplicate, and request that you sign and return to us one copy, signifying your acceptance of the terms and conditions as contained herein.

Yours very truly,
W. R. GRACE & CO.,
K. WILLIAMS,
Oil Department.

Accepted:
WILLIAMS, DIMOND & CO.
By F. A. HOOPER.



WILLIAMS, DIMOND & CO.

S. S. [illegible] Voy. 1 From [illegible] For [illegible] Sailed [illegible] 19[illegible] Arrived 19 Sheet No. [illegible] 111

Art. No.	Name	Mark	Consignee	No. Pkgs.	Articles	Value	Charges	Amount	Date	Name	Remarks
220-S	Northwestern Fisheries Company	A.A.&Co. London	Order Bks... Shaw & Co.London Bkrs. Robert Irwin & Co. London	1600 1225 400 225 1500	Gs. Red Sal... salmon Belly, packed " unskinned do do do " do do do do do do do do do " do do do do Shackleton	5700 1425 570 225 1500	10.00[illegible] [illegible] [illegible] [illegible] [illegible]				
				800 800	do do do do Sockeye do do do do Imperial	800 800	20.[illegible] 20.00	paid paid			
221-S	do do do	Acct. No. 20.[illegible]	do do do	1500 225	gs. Red Sal... salmon Belly, Sockeye do do do do Pinkfish	1425.0 225	75[illegible] [illegible]	Paid 1424			
222-S	A. Sybert & Company, Inc.	[illegible] 20.[illegible] 2/11/[illegible]	Order Ackyert & Co. London Attn. Robt. Irwin & Co.London In Branch to Shaw	800	do do do do do Sockeye Reds	760	[illegible]	do	456.00		
223-S	do do do	Sp do	do do do	800	do do do do do	760	[illegible]	do	456.00		
224-S	do do do	[illegible] 1000/7000	do do do	800	do do do do do	760	[illegible]	do	456.00		
225-S	do do do	do do	do do do	800	do do do do do	760	[illegible]	do	456.00		
226-S	do do do	[illegible] 2000 [illegible]	do do do	800	do do do do do	760	[illegible]	do	456.00		
227-S	do do do	do do	do do do	800	do do do do do	760	[illegible]	do	456.00		
228-S	do do do	[illegible] [illegible]	do do do	800	do do do do do	760	[illegible]	do	456.00		
229-S	do do do	[illegible] 2000 [illegible]	do do do	800	do do do do do	760	[illegible]	do	456.00		
230-S	do do do	do do	do do do	800	do do do do do	760	[illegible]	do	456.00		
231-S	Libby Mc Neill & Libby	[illegible] 1/000	Order Libby Libby McNeill & Libby, Boston	1000	gs. Sliced Fat Salmon Belly Sliced Libby Brand	1000	[illegible]	do	[illegible]		
				500	Gs. Sliced Fat Salmon Sq. Libby Brand	500	[illegible]	do	[illegible]		
232-S	do do do	[illegible] 1/000	Order Libby, Mc Neill & Libby, Boston Attn. Libby McNeill & Libby Boston	200	Gs. Sliced Fancy Salmon Belle Sliced Fancy	1200	[illegible]	do	[illegible]		
233-S	Northwest Trading Company	[illegible]	Order Trading Northwest Trading Company, [illegible]	1 1 1	Ser [illegible] series " Grand Artwork " Jewel Agates	25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
234-S	Bowell & Company, Ltd.	[illegible]	Order Bowell Bros. Ltd. [illegible]	400	Gs. Sliced Fancy Salmon Belly [illegible]	400	[illegible]	[illegible]	[illegible]		
235-S	do do	[illegible]	do do	600	do do do do do	570	[illegible]	do	[illegible]		
236-S	Bennett, Jones & Southern	[illegible]	Order [illegible]	1 1	[illegible] Fresh Salmon Specialties	[illegible]	[illegible]	[illegible]	[illegible]		
237-S	[illegible] Jones & Company	[illegible]	Order Libby Service [illegible]	7500 2500 2000 500 1	Gs. Sliced [illegible] Fat Salmon " do Regular Sliced [illegible] " do Jewel Agates Gs. Sliced [illegible] Fat Salmon do do do do do	[illegible] [illegible] [illegible] [illegible] [illegible]	[illegible] [illegible] [illegible] [illegible] [illegible]	paid paid paid paid paid	[illegible]	do	do

10

S. S. Steffen Valve and Fitting Co. Portland Oregon Schedule for 1917 Annual

Date	Name	Name	Address	No. Pkgs.	Contents	Cu. Ft.	Value	Rate	Charges	Amt. Prepaid	Rec'd. Payment
				1148	Brought forward	1148	9811.45		1615.23		11426.68 11426.68
10-P	Duplicate Bill of Lading to Capt. Anderson Portland Oregon	Sea Foam	Price + Pierce Limited 17 Clements Lane E. London England	6	Pipe Couplings Flanges	21	570	1000 lbs	11.40		11.40 11.40
11-P	Collected C.O.D. Invoice Portland Oregon	1 Van Load	Order - Notify Ortlieb Packing + Rubber Co. London England	36	Valves Cocks and Couplings	222	3611	1000 lbs	222.66		222.66 222.66
12-P	Collected C.O.D. Invoice Portland Oregon.	1 L 20 2 M 20 3 M 20 4 M 20 5 M 20 6 M 20 7 M 45 8 M 20 9 M 20 10 M 20 11 M 20 12 M 20	Order - Notify Thomas Cook 45 Berners St W.1 London England	216	Valves Cocks and Couplings	1372	10417	1000 lbs	1372.80		1372.80 1372.80
13-P	S.S. Steffen Co. Portland Oregon	994	Order - Notify S.S. Steffen Co. c/o S.S.W. Johnson London EC3 England	355	Brought Forward to Cover		Total Weight for Rate	1000 lbs	1.40		1.40 1.40
	Contents for mate M.S.S.D. Please Acknowledge Receipt Thos Steffen										
				3211		3211	33411		1772.63		11798.48 11798.48
							44.68				

WILLIAMS, DIMOND & CO.

S. S. "ENTERPRISE" Voy. 1 From Seattle, For Liverpool Sailed November 22nd, 19 19 Arrived 19 Sheet No. 114

L. No.	Shipper	Marks	Consignee	No. Pcs.	Articles	Weight	Rate	Freight	Adv. Chgs.	Total	Prepaid	Remarks
B/L 100-S	Northwestern Fisheries Company	BCP CO BRISTOL	Order EDS. L. NYE COMPANY Liverpool Notify BCPT. GIRVIN CO. London	1800 440 2240	Ca. Red Cod Salmon Tall Precious Pioneer	2700 fl. 1350000# 738 " 315000# 3438 1575000#	per 100# 1.75	$2756.25		$2756.25	$2756.25	Cases double wire & strapped
B/L 101-S	do do do	JT & CO. BRISTOL	DO DO	1575 675 2250	DO DO Jubilee 2362'6" 1102500# do do Precious 1062'6" 472500# 3438 1575000#		1.75	$2756.25		2756.25	2756.25	do do
102-S	do do do	KESB BRISTOL	do do	1800	do do Jubilee 2700 1350000#		1.75	$2756.25		2756.25	2756.25	do do
103-S	do do do	SSACO BRISTOL	do do	450	do do precious 738 315000#		1.75	551.25		551.25	551.25	do do
104-S	do do do	JS & CO. BRISTOL	do do	225 225 450	do do do 337'6" 157500# do do Pioneer 337'6" 157500# 675 315000#		1.75	551.25		551.25	551.25	do do
105-S	do do do	JDE & CO BRISTOL	do do	225 225 450	do do pioneer 337'6" 157500# do do primer 337'6" 157500# 675 315000#		1.75	551.25		551.25	551.25	do do
106-S	do do do	S. ILES BRISTOL	do do	450	do do pioneer 738 315000#		do	551.25		551.25	551.25	do do
107-S	do do do	JBH CO. BRISTOL	do do	450	do do Pioneer 738 315000#		do	551.25		551.25	551.25	do do
108-S	do do do	PMS BRISTOL	do do	675	do do do 1112'6" 472500#		do	826.88		826.88	826.88	do do
109-S	do do do	MP & SONS BRISTOL	do do	112	do do do 112' 7840#		do	137.20		137.20	137.20	do do
110-S	do do do	EP & SONS, BRISTOL	do do	113	do do do 159'6" 7910#		do	138.43		138.43	138.43	do do
111-S	do do do	EMS BRISTOL	do do	112	do do do 2c' 7840		do	137.20		137.20	137.20	do do
112-S	do do do	CCMS BRISTOL	do do	113	do do do 159-6 7910		do	138.43		138.43	138.43	do do
113-S	do do do	JIACO BRISTOL	do do	450 450 900	do do do 738 315000# do do all Pioneer 1575 1102500#		do	1102.50		1102.50	1102.50	do do
114-S	do do do	SASONS BRISTOL	do do	1125	do do primer 1587'6" 78750		do	1378.13		1378.13	1378.13	do do
115-S	Libby Mc Neill & Libby	1/9250 Liverpool	Order Notify Libby McNeill & Libby, Ltd. London	4250 5000 9250	Halves Chinook Cod Salmon, Libby 4250' 1700.00# do Red " do do 5000 2000.00# 9250 3700.00#		do	6475.00		6475.00	6475.00	do Iron strapped
116-S	do do do	1/8000 Liverpool 18 Liverpool	Order Libby McNeill & Libby Liverpool, Ntf. Geo.B.Green & Company, Liverpool,	8000	Canned Red Salmon, Flats Libby 7500 3500.00#		do	6125.00		6125.00	6125.00	do do
117-S	do do do	D/750 Liverpool	Order Bodwell & Co. Ltd. Notify Powell Bros. Ads. Liverpool.	8000	do do do do do 7500 350000#		do	6125.00		6125.00	6125.00	do do
118-S	F. H. Knowlton	7TL GLASGOW	Order F.H. Knowlton Liverpool Notify Cryfe Tannery, Ltd. near Glasgow	6 Mls. 1 keg	Green Hides do do	76 3480#	per 100 lbs. 1.25	95.00		95.00	95.00	
119-S	Bodwell & Company, Ltd.	B-769-Liverpool	Order Ntf. Powell Bros. Ads. Liverpool	360	ca. Chd. Salmon Yukon 4lbsFl Flats 525 24500#		1.75 per 100#	428.75		428.75	428.75	Cases double wire strapped
120-S	do do do	B-770 Liverpool	do do do do	600	ca do do do 10 Fl Talls 800 42000#		do	735.00		735.00	735.00	do do
121-S	Pacific Exporters Agencies	Morris Reef Co.Ltd. Liverpool, M-133 do M-134	Morris Pkg.Co. Liverpool	1000 2000 3000	ca. exmt.peare Matchless Brand 1500 68000# do do do Supreme " 3500 184.0# 5000 252000#		do	3255.00		3255.00	3255.00	do do
122-S	North Pacific Sea Products Co.	G-Liverpool	Order Ntfy. David Geddes &Sons Glasgow Scotland	100	ca. Canned Whale Meat 166'8" 7000#		do	122.50		122.50	122.50	do do

I CERTIFY HEREBY THAT THIS IS A TRUE COPY OF THE ORIGINAL MANIFEST AND CHARGES THEREON AS FAR AS KNOWN AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

C. HANSEN & SON

MASTER

28 480

Meas. 1.1212 40 wt. 2.1048 2000

WILLIAMS, BRADSHAW & CO.

S.S. [illegible] Voy. [illegible] From [illegible] For [illegible] Sailed [illegible] Wind [illegible] Arrived [illegible] Ship's Name [illegible]

No.	Name	Flag	Company	Tons	Port	Cargo	Date	Remarks
1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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22	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
23	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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32	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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34	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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36	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
37	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

WILLIAMS, DIMOND & CO.

S.S. [illegible] Voy. 50 From SAN FRANCISCO For LIVERPOOL Sailed [illegible] 19[illegible] Arrived [illegible] 19[illegible] Sheet No. 2

			BROUGHT FORWARD									
38	GUGGENHIME & CO.	F G A 1564	ORDER GUGGENHIME & CO. LIVERPL. NOTIFY CHAS FOX & SON MANCHESTR	305	BXL. BAGGING		5940	2.00	114.80		114.80	114.80
39	GUGGENHIME & CO.	B LTD 1562	ORDER GUGGENHIME & CO. LIVERPL. NOTIFY CHAS FOX & SON MANCHESTR	1090	BXL. BAGGING		[illegible]	2.00	618.40		618.40	618.40
40	CALIF PACKING CORPN.	G B S P T	NOTIFY MC AULAY BROS GLASGOW	125	CS TOMATOES		8 7750	1.75	135.66		135.66	135.66
41	CALIF CANNERIES CO.	760	ORDER NOTIFY GHAS GILCHRIST & CO	200	CS PEARS		12600	1.75	220.50		220.50	220.50
42	CALIF CANNERIES CO.	759	ORDER NOTIFY R S GREEN & CO.	535	CS PEARS		33705	1.75	589.84		589.84	589.84
43	U.S. WAR TRADING CORPN.	VARIOUS	NO J BULWELL	53	CS CANNED FRUIT		527	[illegible]	10.00		10.00	10.00
44	PACIFIC EXPORTEAM ARTS.	KORALS BEEF CO. LTD	KORALS BEEF CO. LIT LIVERPOOL	850	CS CANNED VEGETABLES		17000	[illegible]	371.25		371.25	371.25
45	CALIF CANNERIES	818	ORDER NOTIFY GHAS GILCHRISTEN	395	CS CANNED PEARS		24675	1.75	431.81		431.81	431.81
46	WILSON & CO.	W & CO. 165	ORDER NOTIFY WILSON & CO. LIVERPOOL	152	CS CANNED PEARS		9408	1.75	164.52		164.52	164.52
47	GAIFSETH, BARNEY	S W	ORDER NOTIFY ARENS HOTSON & CO. NEWCASTLE ON TYNE	400	CS CANNED APRICOTS		48000	1.75	705.25		705.25	705.25
48	OKURA JAPAN & SON AMERICAN TRADE CO.	AC 4 [illegible] T G	ORDER NOTIFY OKURA JAPAN & SON AMERICAN TRADE CO. LIVERPOOL	137	CS PINEAPPLE		9794	1.75	170.89		170.89	170.89
49	ROSENBERG BROS & CO.	VARIOUS	ORDER GEOFFY T D WILSON & CO. LIVERPOOL	5								
50	WILSON & CO.	W & CO. 169	ORDER NOTIFY WILSON & CO. LIVERPOOL	[illegible]	CS DRIED FRUIT CS CANNED FRUIT		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
51	AMERICAN TRANSPORTATION CO.	VARIOUS	INTERSTATE TRANSPORTATION CO.	324	CNS DRY LEGUMES		23400	2.00	405.20		405.20	405.20
52	CALIF FRUIT & PROD CO.	68	ORDER NOTIFY SHIPPERS REPORTER CO. LTD LIVERPOOL	[illegible]	CS. CNS SALMON		201500	1.75	3504.25		3504.25	3504.25
53	CALIF FRUIT & PROD CO.	NE	ORDER NOTIFY CHAS GILCHRIST SONS LTD LIVERPOOL	[illegible]	CS. CNS SALMON		201500	1.75	3504.25		3504.25	3504.25
54	WILSON & CO.	W & CO. 165	ORDER NOTIFY WILSON & CO. LIVERPOOL	[illegible]	CS. CNS FRUITS		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
55	PACIFIC EXPORTERS ASSOCIES	[illegible]	[illegible]	[illegible]	CS CS CS PEARLS		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
56	WILSON & CO.	W & CO. 168	ORDER NOTIFY WILSON & CO. LIVERPOOL	200	CS CNS FRUITS CS CNS PEARLS		4500	1.75	180.00		180.00	180.00
57	WILSON & CO.	W & CO. 8809	ORDER NOTIFY WILSON & CO. LIVER POOL	[illegible]	CS CS PEARLS		24000	1.75	[illegible]		[illegible]	[illegible]
58	CALIF CANNERIES CO.	736	ORDER NOTY GHA HEARSON & CO. LIVERPOOL	[illegible]	CS CS PEARS		66864	1.75	[illegible]		[illegible]	[illegible]
59	GETZ BROS & CO. INC.	FOX	S ORDER GETZ BROS & CO. NOTIFY CHAS FOX & SON. MANCHESTER	200	CS CNS PEARS		24000	1.75	540.00		540.00	540.00
60	CALIF CANNERIES CO.	785	ORDER NOTIFY A B GREEN & CO. LIVERPOOL	560	CS CANS PEACHES		22400	1.75	896.00		896.00	896.00
61	GETZ BROS & CO. INC.	FOX	ORDER GETZ BROS NOTIFY CHAS ROE & SON MANCHESTER	1032	CS CNS PEARS		71795	1.75	[illegible]		[illegible]	[illegible]
62	WILSON & CO.	W & CO. 164	ORDER NOTIFY WILSON & CO. LIVERPOOL	293	CS CNS PEACHES		17540	1.75	512.20		512.20	512.20
63	WILSON & CO.	W& CO. 164	ORDER NOTIFY WILSON & CO. LIVERPOOL	250	CS CNS PEARS		15500	1.75	271.25		271.25	271.25
64	WILSON & CO.	W & CO. 166	ORDER NOTIFY WILSON & CO. LIVERPOOL	250	CS CS PEARS		15500	1.75	271.25		271.25	271.25
65	WILSON & CO.	W & CO. 165	ORDER NOTIFY WILSON & CO	300	CS CS PEARS		18600	1.75	325.50		325.50	325.50
66	GUGGENHIME & CO.	W & G 1580	ORDER GUGGENHIME & CO. NOTIFY CHAS FOX & SON MANCHESTER	75	BXL. BAGGING		2100	2.00	42.00		42.00	42.00
67	GUGGENHIME & CO.	J G 1581	GUGGENHIME & CO ORDER NOTIFY CHAS FOX & SON MANCHESTER	75	BXL. BAGGING		2100	2.00	42.00		42.00	42.00
68	GUGGENHIME & CO.	G Y C 1573	ORDER GUGGENHIME NOTIFY CHAS FOX & SON MANCHESTER	750	BXL. BAGGING		31500	2.00	630.00		630.00	630.00
69	GUGGENHIME & CO.	W & G 1571	ORDER GUGGENHIME & CO NOTIFY CHAS FOX & SON MANCHESTER	675	BX BAGGING		37800	2.00	735.00		735.00	735.00
70	GUGGENHIME & CO.	J C & G 1573	ORDER GUGGENHIME & CO NOTIFY J GRADWICK ROSE MANCHESTER	900	BX BAGGING		50400	2.00	1008.00		1008.00	1008.00
							[illegible]		[illegible]		[illegible]	[illegible]

						CUBIC FEET					
	FORWARD					1,872,860					
	SUBRAHNIE & CO.	F C & S 1576 LIVERPOOL	ORDER NTFY. BRAS. M. FOX & SON	150	25 LB.BAS CALIF. CHOICE SEEDL RAISINS	4200	2.80		$84.00	$84.00
	DO	T C & S 1574 LIVERPOOL	DO	150	DO	4200	2.80		84.00	84.00
	DO	J W P 1575 LIVERPOOL	DO	500	DO	8400	2.80		168.00	168.00
	DO	C & W 1572 LIVERPOOL	DO	588	DO	21728	2.80		484.56	484.56
	DO	D & W 1568 LIVERPOOL	DO	588	DO	21728	2.80		484.56	484.56
	DO	A B C & S 1457 LIVERPOOL	DO	80	25 LB.BAS DAL. DRIED PRUNES 50/60					
				80	DO 60/70					
				80	DO 70/80					
				80	DO 80/90					
				80	DO 90/100	11200	2.80		224.00	224.00
	LEON ISRAEL & BROS.	L I & BROS. LTD ETC. NO.1	ORDER NTFY. MESSRS. ISRAEL LONDON	100	DS PARADISE VALLEY BARTLETT PEARS 24/28 [STRAPPED]	6200	1.75		108.50	108.50
	DO	DO NO.2	DO	50	DO	3100	1.75		54.25	54.25
	DO	DO NO.3	DO	50	DO	3100	1.75		54.25	54.25
	DO	L I & BROS. LTD ETC	DO	500	DS BARTLETT PEARS	31000	1.75		542.50	542.50
	PRATT LOW PRESERVING CO.	415 C LIVERPOOL	ORDER NTFY. HENRY R. PEABODY & CO.	60	CS CANNED FRUIT	3720	1.75		65.10	65.10
	DO	416 C LIVERPOOL	DO	40	DO	2480	1.75		43.40	43.40
	DO	419 C LIVERPOOL	DO	20	CS CANNED FRUIT					
		419 M LIVERPOOL		28	DO	2920	1.75		51.10	51.10
	DO	428 C LIVERPOOL	DO	20	DO	1240	1.75		21.70	21.70
	DO	426 C LIVERPOOL	DO	20	DO	1240	1.75		21.70	21.70
	DO	430 C LIVERPOOL	DO	40	DO	2480	1.75		43.40	43.40
	DO	420 C LIVERPOOL	DO	50	DO	1860	1.75		32.55	32.55
	DO	515 C LIVERPOOL	DO	175	DO					
		585 M LIVERPOOL		725	DO	54950	1.75		961.12	961.12
	HUNT BROS. PACKING CO.	[V] LIVERPOOL	ORDER NTFY. JOS. TRAVERS & SONS.	95	CS 2½ CANNED FRUITS 85 GL.FT.					
		[Q] LIVERPOOL		225	DO 598 DO					
		[TW] LIVERPOOL		160	DO 340 DO					
		X LIVERPOOL		75	DO 112 DO	31950	1.75		558.78	558.78
	PRATT LOW PRESERVING CO.	432 M LIVERPOOL	ORDER NTFY. HENRY R. PEABODY & CO.	7	CS CANNED FRUIT					
		632 M LIVERPOOL		5	DO	720	1.75		12.60	12.60
	DO	425 M LIVERPOOL	DO	30	DO					
		625 M LIVERPOOL		20	DO	5800	1.75		52.50	52.50
	DO	C 401 M LIVERPOOL	DO	30	DO					
		C 601 M LIVERPOOL		259	DO					
		C 401 B LIVERPOOL		60	DO	19860	1.75		357.05	357.05
						2,412,916				

No.											
	FOR BRO							2,112,916		$8978.36	$8978.36
93	PRATT LOW PRESERVING CO.	619 M LIVERPOOL	ORDER NTFY.HENRY W.PEABODY & CO.	20	CS.CANNED FRUIT	1200	1.75	21.00	21.00
94	DO	420 M LIVERPOOL	DO	136	DO				
		620 M LIVERPOOL	DO	90	DO	15500	1.75	236.25	236.25
95	DO	426 M LIVERPOOL	DO	90	DO				
		626 M LIVERPOOL	DO	60	DO	9000	1.75	157.50	157.50
96	DO	427 M LIVERPOOL	DO	20	DO				
		627 M LIVERPOOL	DO	5	DO	1500	1.75	26.25	26.25
97	DO	428 M LIVERPOOL	DO	88	DO				
		628 M LIVERPOOL	DO	10	DO	1800	1.75	31.50	31.50
98	DO	430 M LIVERPOOL	DO	60	DO				
		630 M LIVERPOOL	DO	40	DO				
		430 M LIVERPOOL	DO	60	DO				
		630 M LIVERPOOL	DO	40	DO	12000	1.75	210.00	210.00
99	DO	431 M LIVERPOOL	DO	15	DO				
		631 M LIVERPOOL	DO	10	DO	1500	1.75	26.25	26.25
100	DO	415 M LIVERPOOL	DO	280	DO				
		615 M LIVERPOOL	DO	120	DO	24000	1.75	420.00	420.00
101	DO	616 M LIVERPOOL	DO	80	DO				
		416 M LIVERPOOL	DO	175	DO	15500	1.75	367.75	367.75
102	DO	417 M LIVERPOOL	DO	90	DO				
		617 M LIVERPOOL	DO	60	DO	9000	1.75	157.50	157.50
103	DO	418 M LIVERPOOL	DO	15	DO				
		618 M LIVERPOOL		15	DO	1500	1.75	26.25	26.25
104	GETZ BROS.& CO.INC.	FOX LIVERPOOL	ORDER NTFY.CHAS.H.FOX & SON	150	CS CND.PEARS				
				1	CS CND.ASPARAGUS				
				1	CS CND.ASPARAGUS	8826	1.75	154.46	154.46
105	DO	DO	DO	180	CS CND.FRUIT	10460	1.75	183.05	183.05
106	CANCELLED								
107	GETZ BROS.& CO.INC.	DO	DO	508	CS CND PEARS	19712	1.75	344.96	344.96
108	ROSENBERG BROS.& CO.	D D 114 LIVERPOOL	ORDER	500	BAGS RICE				
		D D 115		500	DO	102000	1.75	1785.00	1785.00
109	WILSON & CO.	R&CO 904 LIVERPOOL	ORDER [illegible]	480	CS CND PEARS	29760	1.75	520.80	520.80
110	DO	R&CO 905 LIVERPOOL	ORDER	450	CS CND APRICOTS	27900	1.75	488.25	488.25
111	DO	R&CO 903 LIVERPOOL	ORDER	500	CS DO	31000	1.75	542.50	542.50
112	DO	R&CO 904 LIVERPOOL	ORDER	299	CS DO	18538	1.75	324.41	324.41
113	DO	R&CO 901 LIVERPOOL	ORDER	77	CS DO	4774	1.75	83.54	83.54
114	CALIFORNIA CANNERIES CO.	CCC LIVERPOOL	ORDER NTFY.R.B.GREEN & CO.	690	CS CANNED PEARS	43152	1.75	755.16	755.16
115	WILSON & CO.	R&CO LIVERPOOL 902	ORDER	200	CS CND APRICOTS	12400	1.75	217.00	217.00
116	DO	R&CO 907 LIVERPOOL	ORDER	174	CS DO	10788	1.75	188.79	188.79
117	DO	R&CO 908 LIVERPOOL	ORDER	165	DO	10230	1.75	179.02	179.02
118	GETZ BROS.& CO.INC.	FOX LIVERPOOL	ORDER NTFY.CHAS.H.FOX & SON	60	CS CND PEARS	3720	1.75	65.10	65.10
119	DO	DO	DO	1500	DO	93000	1.75	1627.50	1627.50
120	CALIFORNIA CANNERIES CO.	772 LIVERPOOL	ORDER NTFY.R.B.BROWN & CO.	200	CS CND PEARS	12400	1.75	217.00	217.00
						2,641,876		46233.87	46233.87

S.S. EFFINGHAM Voy. 50 From SAN FRANCISCO For LIVERPOOL Sailed 19 Arrived 19 Sheet No. 1

No.	Shippers	Marks	Consigned	No. Pkgs	Articles	Weight	Rate	Freight	Ins. Chgs.	Total	Freight
	FORWARD					2,541,276		4875.87		4875.87	4875.87
121	WILSON & CO.	WACO 967 LIVERPOOL	ORDER	450	CS CND PEACHES						
122	DO	WACO 1005 DO	ORDER	750	CS CND PEARS	74400	1.75	1302.00		1302.00	1302.00
123	DO	WACO 966 DO	ORDER	200	CS CND PEARS	12400	1.75	217.00		217.00	217.00
124	DO	WACO 963 DO	ORDER	750	CS CND PEARS	46500	1.75	813.75		813.75	813.75
125	SMITH FRANK PACKING CO.	M.A.S.BLASDOR VIA LIVERPOOL	ORDR.NTFY HASEROT CANNERIES CO. C/O JAMES MORTON & CO.	250 98 950	CS CND CHERRIES CS CND PLUMS CS CND PEARS	21576 58900	1.75 1.75	377.58 1030.75		377.58 1030.75	377.58 1030.75
126	WILSON & CO.	WACO 962 LIVERPOOL	ORDER	700	CS CND PEARS	43400	1.75	759.50		759.50	759.50
127	DO	WACO 965 LIVERPOOL	ORDER	450	DO	27900	1.75	488.25		488.25	488.25
128	DO	WACO 967 LIVERPOOL	ORDER	25	CS CND CHERRIES	1550	1.75	27.12		27.12	27.12
129	DO	WACO 963 LIVERPOOL	ORDER	1750	CS CND PEARS	108500	1.75	1898.75		1898.75	1898.75
130	DO	WACO 966 LIVERPOOL	ORDER	835	CS CND APRICOTS	51770	1.75	905.97		905.97	905.97
131	DO	WACO 961 LIVERPOOL	ORDER	403	CS CANNED APRICOTS	24986	1.75	437.25		437.25	437.25
132	DO	WACO 963 LIVERPOOL	ORDER	750	CS CND PEACHES	46500	1.75	813.75		813.75	813.75
133	DO	WACO 964 LIVERPOOL	ORDER	28	CS DO	1960	1.75	34.30		34.30	34.30
134	DO	WACO 965 LIVERPOOL	ORDER	250	CS DO	15500	1.75	271.25		271.25	271.25
135	DO	WACO 1005 DO	ORDER	190	CS CND APRICOTS	11780	1.75	206.15		206.15	206.15
136	DO	WACO 964 LIVERPOOL	ORDER	500	CS CND PEARS	31000	1.75	542.50		542.50	542.50
137	CALIFORNIA CANNERIES CO.	784 LIVERPOOL	ORDR.NTFY.HONEYMAN & WILSON	20	CS CANNED PEACHES	1240	1.75	21.70		21.70	21.70
138	DO	786 LIVERPOOL	ORDR.NTFY.THOMAS MARSHALL	20	DO	1240	1.75	21.70		21.70	21.70
139	DO	790 LIVERPOOL 791 LIVERPOOL	ORDR.NTFY.SIMPSON.ROBERTSACO.	125 125	CS CANNED PEACHES DO	15500	1.75	271.25		271.25	271.25
140	DO	777 LIVERPOOL 778 LIVERPOOL	ORDR.NTFY.S.&R.BERISFORD	125 125	CS DO CS DO	15500	1.75	271.25		271.25	271.25
141	DO	787 LIVERPOOL	ORDR.NTFY.GEO.HELLIS & SONS	25	CS CANNED PEACHES	1550	1.75	27.13		27.13	27.13
142	DO	781 LIVERPOOL	ORDR.NTFY.EILLS & CO.	40	CS DO	2480	1.75	43.40		43.40	43.40
143	DO	780 LIVERPOOL	ORDR.NTFY.CARROTHERS & CO.	125	CS DO	7750	1.75	135.63		135.63	135.63
144	DO	782 LIVERPOOL	ORDR.NTFY.JAS.GILBERTSON & CO.	125	CS DO	7750	1.75	135.63		135.63	135.63
145	DO	789 LIVERPOOL	ORDR/NTFY.G.& J.NICKSON & CO.	930	CS DO	57660	1.75	1009.05		1009.05	1009.05
146	DO	788 LIVERPOOL	ORDR.NTFY.MCNAIS & JONES	250	CS DO	15500	1.75	271.25		271.25	271.25
147	DO	785 LIVERPOOL	ORDR.NTFY.DAVID JONES & CO.	250	CS DO	15500	1.75	271.25		271.25	271.25
148	GETZ BROS.& CO.INC.	FOX LIVERPOOL	ORDR.NTFY.CHAS.H.FOX & SONS	247	CS CANNED PEARS	15802	1.75	276.64		276.64	276.64
149	WILSON & CO.	W & CO 963	ORDER WILSON & CO NOTIFY WILSON & CO.	1500	CS CND PEACHES	93000	1.75	1627.50		1627.50	1627.50

WILLIAMS, DIMOND & CO.

S.S. EFFINGHAM Voy. 1 From SAN FRANCISCO For HAMBURG Sailed 19 Arrived 19 Sheet No. 1

					Cubic Feet	Weight	Rate	Amount	Advance	Freight	Charges
1	J. OSWALD	ADDRESSED	HERMAN SCHALLMANN	1 CS CEREAL 1 CS OLD CLOTHING 1 CS CANNED GOODS	18		1.625	29.25			
2	GEORGE F. W. LEHMANN	ADDRESSED	PAUL MICHMANN	5 CS OLD CLOTHING	18	400	2.50	45.00		45.00	45.00
3	RUDOLPH MOHR	ADDRESSED	REGINA MOHR	1 BS CLOTHING 1 CS FOOD PRODUCTS	18		1.625	29.25		29.25	29.25
4	JOHN GROSS	ADDRESSED	GERTRUDE GROSS	1 BOX OLD CLOTHING		40	25%	10.00		10.00	10.00
5	BERNHARD BUNG	ADDRESS U	RICHARD BRUDERMANN	3 BALES OLD CLOTHING 5 CS ASST. GROCERIES	9 [illegible]	310 48	8.00 1.625 2.50	24.80 14.63 1.20		40.53	40.53
6	F. R. [illegible]	ADDRESSED	MRS. CLARITA NAUPERT MUHLENDAHL	1 BBL. WEARING APPAREL		190	8.00	52.00		52.00	52.00
7	A. F. ARGENY CO.	ADDRESSED	JOHANN DAHNKE	1 CS FOOD STUFFS	5	183	MIN	10.00		10.00	10.00
8	A. F. ARGENY CO.	ADDRESSED	MARIE KUHLBEIER	1 CS FOOD STUFFS	6	180	MIN	10.00		10.00	10.00
9	A. HAUSTEADT	ADDRESSED	ADOLF BLUM	1 BOX CLOTHING		110	MIN	10.00		10.00	10.00
10	MRS. ALBERTO BOHLMANN	ADDRESSED	MRS SOPHIE RANTZ	1 CS GROCERIES 1 CS THREAD & WEARING APPAREL	14		1.625	22.75		22.75	22.75
11	HENRY BOHLEDER	ADDRESSED	F GRIMME	1 CRT GROCERIES		282	MIN	10.00		10.00	10.00
12	HENRY SCHNEIDER	ADDRESSED	MARX BECKER	1 CRT FOOD PRODUCTS		225	MIN	10.00		10.00	10.00
13	E. POLLATZ	ADDRESSED	J. NEUMANN	1 CS GROCERIES 1 CS USED CLOTHING RICE SOAP 1 CS USED CLOTHING CHOCOLATE SOAP	15		1.625	21.13		21.13	21.13
14	[illegible]	ADDRESSED	MRS. AGNES SCHULZ	1 CS LARD & BB CORNED BEEF 1 CS CO GOODS COFFEE & CHOCOLATE 1 CS RICE 1 CS BARLEY FLOUR 1 CS CO MILK, BEANS ETC 1 CS SOAP	18 BAL. SEE 1ST ITEM	225 168 138 234 158	2.25 2.40 2.50	3.78 5.51 14.19			
15	[illegible]	ADDRESSED	GUSTAV LUBOHN	1 CS NEW CLOTHES 1 BOX CLOTHING TOBACCO & GROCERIES	2 14		1.625 1.625	19.50 22.75		40.78 22.75	40.78 22.75
16	[illegible]	ADDRESSED	[illegible] H. STERNBERG	1 CS FOOD & CLOTHING 1 CS CANNED ROAST BEEF 1 CS CANNED CORNED BEEF 1 CS CRISCO 1 BS DRIED PRUNES 1 BAG SUGAR		56 136 92 151	8.00 3.25 3.40 2.50	4.48 2.84 3.13 3.28		13.73	13.73
17	[illegible]	ADDRESSED	GUSTAV ROSENTHAL	1 CS [20 HAND] WEARING APPAREL	8	108	1.625	13.00		13.00	13.00
18	SOPHIE LANGER	MORITZ LIEBOLD HAMBURG 5	ANDREE & WILKERLING	1 CS GROCERIES		120		10.00		10.00	10.00
19	[illegible] PORTLAND OREGON	ELKAN HAMBURG	ELKAN HAMBURG	PKG. GENERAL MERCHANDISE 190 CS. 9 CRATES. 4 BARRELS	1148		1.625	1865.50		1865.50	1865.50
20	[illegible]	M.K.S. HAMBURG	BARTNING GEBR	1 CS SOAP 1 CS LARD 1 CS SUGAR 1 CS RICE 5 CS MILK		260 70 60 60	2.50 3.40 2.50 2.25	5.98 2.55 1.50 1.35		11.21	11.21
21	[illegible]	VARIOUS	ORDER NTFY C.N.HALLBAECH & SOEHNE	56 PKGS PROVISIONS	ABBR	1827 531 499 168 519 96	2.50 2.25 2.50 3.50 3.40 8.00	42.02 11.95 12.48 5.88 10.85 7.68		90.86	90.86
22	[illegible]	ADDRESSED	ALFRED HOLLE	1 CS CANNED FOODSTUFFS 1 CS WORN CLOTHING		570 200	2.50 8.00	13.11 16.00		29.11	29.11
23	[illegible]	M.S. C/O U.C.P.CO. HAMBURG	J.C.PFLUEGER & CO.	5 BAGS COFFEE		510	2.50	11.73		11.73	11.73
24	[illegible]	ADDRESSED	MRS. IDA BECKER	1 BOX GENERAL MDSE.	10		1.625	16.25		16.25	16.25
					[illegible]	8154		2378.26		2378.26	2378.26

WILLIAMS, DIMOND & CO.

S.S. EFFINGHAM Voy. 1 From SAN FRANCISCO For HAMBURG Sailed 19 Arrived 19 Sheet No. 2

No.	Name	Marks	Consignee	No. Pkgs.	Description	Cubic Feet	Weight	Rate	Freight	Advances	Total	Payments
	BROUGHT FORWARD					1299	8654				2378.38	2378.38
25	EDW. H. BROWN	ADDRESSED	CARL SCHREIBER SONNENBERG	2 1 1 1 1 1 1	BDLS.[4 SX] FLOUR CS. CANNED BEEF CS. DRIED APRICOTS CS. JAM CS. CORN STARCH CS. RAISINS CS. CANNED PEACHES	2	405 180 61	2.40 2.50 2.50 1.625	9.72 4.14 2.13 3.25		19.24	19.24
26	J.LEFKOWITZ	ADDRESSED	ROHLIG & CO.FOR SIMON SONNEIDER	1	CS HOSE.	15		1.625	24.38		24.38	24.38
27	MARTIN F.HUNINS	ADDRESSED	MR.GUSTAV LEBAHN	1 1	PKG.OLD CLOTHING DO AND GROCERIES		Min.		10.00		10.00	10.00
28	MRS.M.HEY	ADDRESSED	HEINRICH MARTIN	1	CS HOSE.	8		1.625	13.00		13.00	13.00
29	BECH.VAN SICLEN & CO.INC.	U.E.C. 16 HAMBURG	ORDR.NTFY UNITED EXPORT CO.LTD.	500	BAGS RICE SCREENINGS [DOUBLE BAGGING]		50000	2.25	1125.00		1125.00	1125.00
30	RELIEF COMMITTEE FOR WOMEN & CHILDREN OF GERMANY & AUSTRIA	D.R.K. BERLIN NO 700	DEUTSCHE ROTE KREUZ GESELLSCHAFT	700	SACKS BEANS		60200	2.50	1384.60		1384.60	1384.60
31	DO	D.R.K. BERLIN NO.489 TO NO.492 INCL.	DO	4	CS GENERAL HOSE	51		1.625	82.88		82.88	82.88
32	DO	D.R.K. BERLIN NO.500	DO	1500	CS CONDENSED MILK [ALPINE]		97500	2.25	2193.75		2193.75	2193.75
33	DO	D.R.K. BERLIN NO.400	DO	400	SX RICE SCREENINGS		40000	2.25	900.00		900.00	900.00
34	DO	D.R.K. BERLIN NO.87 TO NO.90 INCL.	DO	4	CS COTTON FLANNEL	168		1.625	273.00		273.00	273.00
35	WAGNER LEATHER CO.	ADDRESSED	OTTO BRAUN,BOSENBACH,RHEINPFALZ. GERMANY	1	CS GROCERIES	10		1.625	16.25		16.25	16.25
36	MRS.H.H.BLAU	ADDRESSED	MISS AMALIA ORSCHIEDT	1	CS GROCERIES & CLOTHES	10		1.625	16.25		16.25	16.25
37	WAGNER LEATHER CO.	ADDRESSED	KARL OR BERNARD MEHRER	1	CS GROCERIES & CLOTHES	10		1.625	16.25		16.25	16.25
38	PETER STELLING	ADDRESSED	MRS.LANE JENSEN	1	BDL. USED CLOTHING		Min.		10.00		10.00	10.00
39	RELIEF COMMITTEE FOR WOMEN & CHILDREN OF GERMANY & AUSTRIA	D.R.K. BERLIN 1/65 80/6 51 400/87	DEUTSCHE ROTE KREUZ GESELLSCHAFT	5 4 13 2 76 1 388 13 5 1 21	CS CANNED BEANS CS CANNED MILK SX BEANS CS SOAP CS CANNED MILK BX CANNED MILK CS MERCHANDISE BX DO BDLS DO CAT DO BX DRIED PRUNES	4557	7650 1565	2.30 2.50 1.625	175.95 39.38 7047.63		7263.16	7263.16
40	N.T.BECK	ADDRESSED	H.BREYUCK	1 2	CS.BACON CS.ROAST BEEF		Min.		10.00		10.00	10.00
41	J.O.ELLIS FORWARDING CO.	ADDRESSED	GUSTAV HALLENSHEID	1	CS HOSE		Min.		10.00		10.00	10.00
42	DO	ADDRESSED	MRS.BEATRUDE EBERS	1	BX HOSE		Min.		10.00		10.00	10.00
43	RELIEF COMMITTEE FOR WOMEN & CHILDREN OF GERMANY & AUSTRIA	D.R.K. BERLIN NO.500	DEUTSCHE ROTE KREUZ GESELLSCHAFT	500	CS CONDENSED MILK		19200	2.10	403.20		403.20	403.20
44	J.O.ELLIS FORWARDING CO.	ADDRESSED	MRS.HELEN SHEPKY	1	CS MERCHANDISE		Min.		10.00		10.00	10.00
45	DO	ADDRESSED	HERMAN OBRIKAT	1	CS DO		Min.		10.00		10.00	10.00
46	H.ZIMMERMAN	O.Z. HAMBURG	OTTO ZIMMERMAN	3 2 8 2 2 1 4	BDLS.[2 BX] DRIED FRUIT BXS DO CS. CANNED MILK CS. SOAP CS. LARD CS. RICE CS. CANNED FRUIT		248 895 100 60	2.50 2.50 3.40 1.55	6.20 20.39 3.40 1.55		31.54	31.54
						5906	186548				16210.78	16210.78

47	U.G.E.L.I.S FORWARDING CO.	ADDRESSED	HERAN E.KAPPEL	1	CS SECOND HAND CLOTHING	5	MDSE.			10.00		10.00	10.00
48	DO	ADDRESSED	G.A.HALLENSHEID	1	CS MERCHANDISE	4	MDSE.			10.00		10.00	10.00
49	A.H.KORTEN	U.G.E. 100	INGEBURG JENSEN	1	BX PERSONAL BELONGINGS	9			1.625	14.63		14.63	14.63
50	ELIZABETH REIN	ADDRESSED	WILLIAM REIN	1	BASKET MERCHANDISE	4	MDSE.			10.00		10.00	10.00
51	DO	ADDRESSED	ARTHUR MEYER	1	BX MERCHANDISE	3	MDSE.			10.00		10.00	10.00
52	SCHRODER PRESERVING CO.	ADDRESSED	PAUL REICHELT,ALTEN	4 2 1	BX JAR & JELLY BX MERCHANDISE BASKET PERSONAL EFFECTS	3			2.50 6.50 1.625	6.31 13.00 4.88		23.09	23.09
53	EMBLANDEN DRAYAGE CO.	ADDRESSED	JACOB MADHOL ETTLINGEN	1	CS.OLD & NEW CLOTHING & GROCERIES	21			1.625	34.13		34.13	34.13
54	BECH. VAN SICLEN & CO. INC.	U.E.C. 86 HAMBURG	CAUR,NTFY,UNITED EXPORT CO.LTD.	2000	POCKETS RICE			204000	2.25	4590.00		4590.00	4590.00
55	DO	U.E.C.C. 15 HAMBURG	DO	1000	DO			102000	2.25	2295.00		2295.00	2295.00
56	WILLIS & CO. INC.	W.M. HAMBURG	HUGO HARTIG	1 5	CS HOSE CS GROCERIES	20			1.625	32.50		32.50	32.50
57	U.G.E.L.I.S FORWARDING CO.	ADDRESSED	MRS.ELSIE GANZEL	1	BX MERCHANDISE	6	MDSE.			10.00		10.00	10.00
58	HARRY ABRAHAM	W.G. FRANKFURT A/M	MR.GRUNEBALM	1	DO	6	MDSE.			10.00		10.00	10.00
59	RUDOLPH MOHR	ADDRESSED	HELENE MOHR	1	DO	4	MDSE.			10.00		10.00	10.00
60	KARL KREISCH	U.G. BRESLAU	JOSEPH JONAS	1	CS DO	6	MDSE.			10.00		10.00	10.00
61	JENSEN BROS.	ADDRESSED	MRS.MARIE JENSEN	1 1 1	CS SUGAR CS GROCERIES CS WALNUTS		MDSE.			10.00		10.00	10.00
62	KARL KREISCH	A.K.	ADOLPH KREISCH	1 1 1	CS CANNED BEEF CS NAVY BEANS CS HOSE	6		99 224	2.25 2.50 1.626	1.33 5.11 9.75		16.25	16.25
63	CANCELLED												
64	U.G.E.L.I.S FORWARDING CO.	OTTO LEHMANN	OTTO LEHMANN	1	CS MERCHANDISE		MDSE.			10.00		10.00	10.00
65	RELIEF COMMITTEE, PORTLAND, ORE.	ELKAN HAMBURG 501/525 550/554 801/824 850/854	NATIONALE HILFS KOMITEE	917 340	CS CONDENSED UNSWEETENED MILK PKG GENERAL MDSE	1495		35605	1.626 2.10	2429.38 1251.71		3681.09	3681.09
66	BECH.VAN SICLEN & CO.INC.	U.E.C.100 HAMBURG U.E.C.25 HAMBURG	UNITED EXPORT CO.LTD.	7500 2500	BAGS RICE POCKETS RICE [125 TONS]			1021250	2.25	22978.13		22978.13	22978.13
67	JOSA HENNIG	HERAN FRITZ SCHNEIDER	H.C.LEITHEUSEN	1	CS MERCHANDISE	9			1.626	14.63		14.63	14.63
68	MAX CHRISTENSEN	HERMEN CHRISTENSEN VILLA LINDBERG APENRADE SCHLESWIG HOLSTEIN GERMANY	H.C.LEITHEUSEN	1	DO	18			1.626	29.25		29.25	29.25
69	ANNA F.BLOMBERG	AUGUSTE BLOMBERG	AUGUSTE BLOMBERG	1	DO		MDSE.			10.00		10.00	10.00
70	JARVIS BROTHERS	ADDRESSED	HENRY WARZINSKY	1 2	CS CLOTHING CS GROCERIES	6		95	8.00 1.626	7.60 9.75		17.35	17.35
71	BECH.VAN SICLEN & CO.INC.	U.E.C.100 HAMBURG	CAUR,NTFY,UNITED EXPORT CO.	3000	POCKETS RICE [150 TONS]			306000	2.25	6885.00		6885.00	6885.00
72	H. HUSEMEIER	H.H.HEIMANN	H.H.HEIMANN	1 1	CS CELLO [MUSICAL INSTRUMENT] CS OLD BOOKS	26			1.626	42.25		42.25	42.25
73	HANS CHRISTENSEN	ADDRESSED	CARL JACOB SPRINGEIN	15	PKGS PROVISIONS			65 140 114 192 51	3.50 2.25 2.50 2.10 2.50 1.625	3.28 7.65 2.82 4.03 1.28 3.25		21.11	21.11
						2581						36995.17	36995.17

WILLIAMS, DIMOND & CO.

S. S. EFFINGHAM Voy. From SAN FRANCISCO For HAMBURG Sailed 19 Arrived 19 Sheet No. 4 124

		Marks				CUBIC					
	FORWARD					[illegible]	[illegible]			[illegible]	[illegible]
74	HAAS BROTHERS	ADDRESSED	FRAU ROSA ISRAEL	18	PKGS PROVISIONS	7	19/76 67	1.62½	18.37	56.995.17	56.995.17
							36	3.50	1.26		
							465	2.25	10.46		
							64	2.50	1.60		
							65	2.10	1.37		
							69	2.30	1.59	27.65	27.65
75	HAAS BROTHERS	ADDRESSED	FRAU JACOB RAISS	15	PKGS PROVISIONS		114	2.30	2.62		
							65	3.50	2.28		
							340	2.25	7.65		
							51	2.50	1.28		
							192	2.10	4.03		
						2		1.62½	3.25	21.11	21.11
76	HAAS BROTHERS	ADDRESSED	F.TRIEST & SOHN	15	PKGS PROVISIONS		65	3.50	2.28		
							341	2.25	7.67		
							52	2.25	1.30		
							115	2.30	2.65		
							193	2.10	4.05		
						2		1.62½	3.25	21.20	21.20
77	ROSENBERG BROS. & CO.	RR 745 RR 757 RR 747 HAMBURG	ORDER NTFY.ALFRED HONIGBAUM	145	BAGS RICE						
				198	DO						
				1149	DO		150692	2.25	3390.57	3390.57	3390.57
78	J.F.C.HAGENS	S & H BREMEN	ORDER NTFY.SMIDT & HAGENS	2	CS PINEAPPLE CORES		110	2.30	2.53		
				14	CS LUBRICATING OIL		1400	2.40	33.60		
				80	BBLS DO		36000	2.40	864.00	900.13	900.13
79	J.ARON & COMPANY INC.	ARONCO A A A HAMBURG	ORDER J.ARON & CO.NOTIFY ORDER	212	BAGS RICE (CHOICE)CALIFORNIA		21200	2.25	477.00	477.00	477.00
80	BECH.VAN SICLEN & CO. INC.	U.E.C.19 HAMBURG	ORDR.NTFY.UNITED EXPORT CO.LTD.	2500	POCKETS CAL.JAPAN RICE (125 TONS)						
		U.E.C.23 HAMBURG		7000	DO (350 TONS)		959500	2.25	21588.75	21588.75	21588.75
81	BECH.VAN SICLEN & CO. INC.	U.E.C.22 HAMBURG	ORDR.NTFY.UNITED EXPORT CO.LTD.	20000	POCKETS CAL.JAPAN RICE (1000 TNS)		2020000	2.25	45450.00	45450.00	45450.00
82	SHIPPENS COMMERCIAL COMPANY	SCC HAMBURG 140	ORDR.NTFY.NAGLE & COHRS	500	BAGS FANCY COATED RICE						
		SCC HAMBURG 141		500	BAGS CHOICE COATED RICE		101000	2.25	2272.50	[redacted]	[redacted]
83	BECH.VAN SICLEN & CO. INC.	U.E.C.28 HAMBURG	ORDR.NTFY.UNITED EXPORT CO.LTD.	2000	POCKETS CHOICE CAL.JAPAN RICE		204000	2.25	4590.00	4590.00	4590.00
84	CARL MUNTER	ADDRESSED	DAVID LANGE BERLIN	2	CS CO MILK			MIN.	10.00	10.00	10.00
				1	CS SOAP						
85	BECH. VAN SICLEN & CO.INC.	U.E.C.14 HAMBURG 1 TO 100	ORDER NTFY.UNITED EXPORT CO.	99	CS CANNED SARDINES						
		K.R.C. 3 HAMBURG		1	CS CANNED FRUIT		4470	2.25	100.58	100.58	100.58
86	ROSENBERG BROS.AND CO.	F E 227 HAMBURG	ORDER OF L.BEHRENS SOEHNE HAMBURG	4812	BAGS BEANS		498418	2.30	11235.51	11235.51	11235.51
87	DO	D E 115 HAMBURG	FERD ANDERSEN CO.	4000	DOUBLE BAGS RICE		408000	2.25	9180.00	9180.00	9180.00
88	DO	B & B HAMBURG	ORDER	6	CS DRIED FRUIT RICE & RAISINS MIXED	24		1.62½	39.00	39.00	39.00
						[illegible]	8.577.974		156.: 7.17	[redacted]	

WILLIAMS, DIMOND & CO.

S. S. FRESNIGHAM Voy. 50 From SAN FRANCISCO For BALBOA Sailed 19 Arrived 19 Sheet No. 1 125

No.		Marks	Consignee	No. Pkgs	Articles	Weight	Rate	Freight	Adv. Charges	Total	Primage	
1	W R GRACE & CO.	NO MARK	PANAMA AGENCIES CO.	1	LOT CONTAINING 5936.69 NET BARRELS EACH 42 GALLONS OF 231 CUBIC INCHES DIESEL FUEL OIL IN BULK							FREIGHT TO BE PAID ON OUT TURN AT BALBOA ACCORDING TO PANAMA CANAL OFFICIAL GAUGES.

COPY.

December 1st, 1919.

Messrs. Williams, Dimond & Co.
310 Sansome Street,
San Francisco, Calif.

Gentlemen:

Attention of Mr. Fred Hooper:

CARGO DIESEL OIL PER SS. "EFFINGHAM"

We agree to deliver to the SS. EFFINGHAM at San Francisco approximately 6000 barrels of Diesel Oil to be carried as freight in the vessel's deep tanks to Balboa, C. Z., and there delivered at the Government Oil Crib to Tank No. 10 via Panama Canal Pumps. It is understood that this oil is to be delivered to the vessel at San Francisco at such a time that no delay will be occasioned in loading.

It is understood that freight will be payable at the rate of 65¢ per net barrel on the quantity of Diesel Oil delivered at Balboa as determined by the official gauges of the Panama Canal; also that the ship will pay for any of this oil retained on board at the Shipping Board rate for Fuel Oil at Cristobal on the date of shipment. The vessel will pay for any of this cargo oil consumed as bunkers between San Francisco and Balboa at the established Panama Canal rate for Diesel Oil at Balboa on the date of shipment.

Freight will be payable in San Francisco on receipt of cable advices of the quantity delivered at Balboa.

In the event of a constructive total loss of the vessel and/or cargo mentioned herein, we agree to pay freight on the total net barrels placed on board at San Francisco.

We agree to discharge and take delivery of this oil at Balboa at the rate of 800 barrels per hour, time being calculated from the hour the vessel commences pumping to the hour pumping is completed, failing which we agree to pay demurrage at the rate of $1.00 per net registered ton per day, it being understood, however, that we will not be required to pay demurrage in the event there is no actual delay to the vessel in transitting the Canal.

It is mutually understood and agreed that the ship's pumps are to be at our disposal under the direction of the Chief Engineer of the vessel, who is to be instructed by you to co-operate with us and render all possible assistance in expediting handling.

We further agree to reimburse the ship for any port, pilotage or wharfage charge incurred directly on account of the fact that the vessel is carrying cargo Fuel Oil and which would not be incurred should the vessel transit the Canal without docking at the Government Oil Crib, Balboa, for the purpose of discharging this cargo oil.

This agreement is subject to the usual clauses of the United States Shipping Board's bill of lading.

In the event that a berth is not available or we are not in a position to receive oil on the steamer's readiness to discharge we agree to pay demurrage at the rate specified above from the hour the vessel is in readiness to discharge until pumping com-

mences providing, as above, that actual delay in transmitting the Canal is thus occasioned.

We are sending you this letter in duplicate, and request that you sign and return to us one copy, signifying your acceptance of the terms and conditions as contained herein.

Yours very truly,
W. R. GRACE & CO.,
K. WILLIAMS,
Oil Department.

Accepted:
WILLIAMS, DIMOND & CO.
By F. A. HOOPER.

S.S. [illegible] Voy. to [illegible] From San Francisco For [illegible] Sailed [illegible] 19 Arrived [illegible] 19 Sheet No. 130

C.B.	Name	Rate	Capacity	No. Pcs.	Marks	Value	Rate	Amount	Date	Time	Remarks	CHARGES	Remarks
1.	[illegible]	[illegible]	[illegible]	1 CAT	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Form No. 940

CANADIAN GOVERNMENT MERCHANT MARINE LIMITED

BRITISH COLUMBIA—CALIFORNIA SERVICE

E. H. DODWELL & CO., LTD., AGENTS, SAN FRANCISCO AND LOS ANGELES, CAL.

BILL OF LADING—ORIGINAL

Shipper's No. .....

Agent's No. .....

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading

at 192

from .....

the goods described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, to be carried upon and subject to the conditions on the face and back hereof, to the usual place of delivery at said destination.

Nature, Weight, Quantity, Measure, Gauge, Quality, Grade, Condition, Brand, Contents and Value unknown, and the shipowner not accountable for same notwithstanding any written description.

(Mail Address—Not for purposes of delivery.)

Consigned to .....

Destination ..... (Province or State of..... County of.....

Route ..... Vessel.....

MARKS—NUMBERS (As Given by Shipper)	No. of Pkgs.	DESCRIPTION OF ARTICLES (As Given by Shipper)	WEIGHT—CUBIC FEET (Subject to Corrections)	

...Court
17692
Respondent's Exhibit No. H.
January 2, 1925.
F. B. MALING, Clerk
J. Nobarbye Deputy Clerk

No. 4748
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JAN 4 1926
F. D. MONCKTON,
CLERK.

FREIGHT

Advances

Arbitrary beyond

Total Collect

Prepaid

Terms and Conditions Accepted.

Value of Shipment stated by Shipper $ .....

Said packages were received and are to be held and carried and delivered by Carrier and by each several succeeding carrier, if any, subject to all the stipulations and conditions hereon and on the reverse side hereof and under which freight on said packages were adjusted and packages were received for transportation and to all of which shipper has agreed and hereby does agree; and every holder hereof shall be held bound thereby whether same be printed or written.

(SHIPPER) (RECEIVING CLERK FOR CARRIER)

It is agreed with regard to the shipment of packages destined beyond carrier's line that as soon as any one connecting through carrier has delivered packages to another connecting carrier, warehouse, or other facility used in connection with the through transit of package, that freight shall be earned to the point of such delivery and shall be due and payable at the rate arranged by the carrier, warehouseman or such other facility, or, if not arranged, then as prescribed by the printed tariffs, and, if not so determinable, then the amount due shall be such portion of the through rate as the distance carried bears to the whole distance to be carried, and such freight shall be earned whether vessel, warehouse facility and/or goods are or are not lost, damaged or destroyed, and, in addition to the personal liability of the consignor and owner of the goods, the carrier, warehouseman, and such other facility, shall have a lien on every package or part of package for such freight and charges. This clause shall be for the benefit of each carrier, warehouseman, and such other facility.

RELEASE. Shipper desiring to receive benefit of the rates provided by Carrier's current tariff that may lawfully apply when merchandise is shipped at a released or declared valuation, hereby stipulates that the goods covered by this bill of lading are each and all of the value of $ per ..... and that in no event shall Carrier be liable in excess of said last declared value.

98

SEE CONDITIONS ON BACK HEREOF

SHIPPER

CONDITIONS

(a) With respect to Pacific Coast water carriage:

IT IS MUTUALLY AGREED (1) that the Water Carrier has liberty to make deviations, to call with or without pilot, to tow and assist vessels in distress or to be towed, [illegible] to convey goods to ports or places in any order for any purpose, to transfer goods to other vessels, to proceed to or stay at any port or place whether in or out of the ordinary course of her voyage to ship or transship the goods to their destination, by any other ship.

2 That the Carrier shall not be liable for loss or damage occasioned by reasons beyond its control, by the perils of the sea or other waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrest or restraint of princes, rulers or people, by compliance with the orders or instructions of any civil, military or naval officials or authorities, whether legal or illegal, and whether incidental or not to any state of war at any time existing, by riots, mobs, strikes or stoppage of labor, whether lawful or unlawful, by lockouts, by explosions, bursting of boilers, breakage of machinery or breakdown of or defects in any vessel, defect in hull, machinery or appurtenances, or by unseaworthiness, fault in reading or other mistake of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowners, not resulting, however, in any case from want of due diligence by the owners of the Ship or any of them, or by the ship's Husband or Manager), nor for loss or damage occasioned by frost, heating, climatic temperatures or boiler, decay, putrefaction, rust, sweat, vermin, change of character, drainage, leakage or breakage, bent marks, or injury from bents, injury to or rotting of wrappers or packages, contact with or sweat or evaporations from any other goods, nor for any claim for breakage, scratching, denting, bruising, marking or discoloration of marble or machinery, addresses or descriptions, nor for rusting at any time, nor for any loss or damage arising from the nature of the goods or the insufficiency of packages, nor for concealing, misdescribing or misdescription of the goods, nor for risk of craft, nor for transhipment, nor for any loss or damage by explosion or spontaneous combustion of the cargo, nor for any claim whatsoever unless notice of loss or damage and general nature of same be given in writing to the Carrier or its Agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof, or if the loss or damage be not then apparent, within three days after such removal and it be proved that the goods were in the custody of the Carrier up to the time of removal.

3 That the Carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewelry, Pictures, Statuettes, Porcelain, Works of Art, Glass, Pare China, Glass, Porcelain, Watches or Clocks in any respect, nor for goods of any description whatever above the value of $5.00 per cubic foot, and in no case is the carrier to be liable for goods the value of which is beyond $100 per package unless bills of lading are signed therefor with the value therein expressed and a special agreement is made.

4 That shippers shall be liable for any loss or damage to ship or cargo caused by inflammable explosive or dangerous goods shipped without full disclosure of their nature, whether such shipper be Principal or Agent, and such goods may be thrown overboard or destroyed at any time, without compensation.

5 That the Carrier shall have a lien for any right of action over the goods for all freights, primages and charges, and also for loss or damages which the Ship or Cargo may incur or suffer by reason of the illegible, incorrect or insufficient marking, numbering or addressing of packages or descriptions of their contents or any other particulars required by the authorities at the port of delivery and also for the expenses of ascertaining any such loss. And that if no sale of the goods at destination for freights, loans and charges, the proceeds fail to cover said freights, loans and charges, the Carrier shall be entitled to recover the difference from the Shipper.

6 That the Master of the Ship, and owners or agents of the line or railway company, shall have a lien on the goods, not only for the freight and charges herein and for all previous sums and liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods, but also for all previously ascertained freight and charges due to them by the consignees, and whether payable in advance or not. That the Shipper and/or an owner of the goods are liable together and separately for such freight and charges and for all other expenses incurred in the onset of goods ascertained or refused by consignees and sold by Company's Agents or by Customs, and remaining sufficient to pay same in full.

7 That in case the Ship shall be prevented from reaching her destination, by Quarantine, the Carrier may discharge the goods into any depot or hospital, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon and shall be paid by the owner of the goods on demand.

8 That the Ship may commence discharging immediately on arrival, and discharge continuously regardless of weather. The Collector of the Port (if there be one at the port of discharge) being hereby authorized to grant a general order for discharge immediately on arrival and upon discharge the responsibility of the Carrier shall cease and the goods shall be at the risk of the Consignees and if not taken by him within such time as is provided by the regulations at the Port of Discharge, they may be stored by the Carrier at the risk and cost of their owners. Payment of all delivery of the Cargo at their options to be done by the Agents of the ship at their tariff rates at the expense and risk of the receivers of the goods. Tonnage and wharfage dues shall be payable by the consignees of the goods. When the goods are carried to a port or place where there is no wharfinger, warehouseman or other responsible person to receive same on behalf of the consignee, the consignee shall be on hand to receive the goods, perhaps by package as discharged, and if the consignee is not on hand to receive the said goods package by package as discharged, the master may deliver the goods by depositing the same on any float, loading stage, wharf or on the sea shore or on the bank of the river, or other similar place at the risk of the goods at the place of destination.

9 That full freight is payable on outward or homeward cargo, but no freight is due on any homeward or home or outward journey in the absence of express agreement to the contrary during the voyage.

10 That notice of claims for short delivery must be given before the ship leaves her destination. The price shall be the market prices at the place and time of shipment, unless a lower value has been declared and unless written notice of any claim for loss or damage to any goods shall be given before taking delivery thereof.

11 The shipowner is not to be liable for any damage to any goods, however caused, which are capable of being covered by insurance, nor for any claim unless notice of such is not given before the removal of the goods, nor for claims for damage or detention to goods whether under through Bills of Lading or otherwise, where the damage is done or detention occurs while the goods are not in the possession of the Shipowner, nor in any case for more than the market price aforesaid ascertained or declared value of the goods whichever shall be the least.

12 Freight payable by weight is to be paid on the gross weight loaded from the ship, unless otherwise agreed, as to the mass of grain and seed. Parcels for different consignees collected or made up in single packages addressed to one Consignee to pay full freight on such parcel.

13 That goods destined to ports, places or docks other than the Ship's port place or dock of discharge are to be forwarded from thence at the expense and risk of their owners and subject to all conditions enacted by the Carriers who complete the transit.

14 That in the event of the vessel being prevented by ice obstructions or other circumstances of navigation from reaching destined port, the Master reserves the liberty of either landing Cargo at nearest open port he can reach with safety or bringing it back to port of shipment or transhipment in either case or where a rail and seaports, but charging ordinary freight only, or should the last named of the reasons have existed for the above mentioned port the goods may be sent to the port nearest to their destination with which there is direct communication, or they may be warehoused at the intermediate port at the expense and risk of the owners of the goods.

15 In case the whole or any part of the goods specified herein be prevented by any cause from going to the ship, if any vessel herein, or be prematurely or loaded at an intermediate port the Carrier is only required to forward them by a preceding, or succeeding steamer of its line, or by the first available steamer of any other line, and incurs no further liability. The nonshipment in this Bill of Lading as to the shipment of the goods shall not be nevertheless against the Carrier if such goods or part thereof are not so shipped, and notwithstanding that same be then offered in vain.

16 Also that this Bill of Lading duly endorsed, be given up in exchange for delivery order

17 Also that freight payable on measurement goods how or not specified.

18 Also that in accepting this Bill of Lading, the shipper acting for himself and on behalf of the owner and/or consignee of the goods and the holder of the Bill of Lading agrees to be bound by all its terms, stipulations, exemptions and conditions, whether written or printed, as being the contract on which the rate of freight is based, and that it is binding on such shipper and/or owner and/or consignee, as fully as if the said terms, stipulations, exemptions and conditions were all signed by them, notwithstanding any customs or usage of any port at which the vessel may load or discharge which may in any respect vary or conflict with any of the terms, stipulations, exemptions and conditions. Connecting Carriers their servants and employees shall not be held to be the agents, servants or employees of the Carrier or for its actions, and not liability shall attach to the said Carrier for any goods not carried by her which may be conveyed further and the Ship's contract is completed on discharging or having provided the identical goods delivered to her or her part of loading, irrespective of the descriptions of same in this Through Bill of Lading.

19 Also that in the event of the owner agent charterer or master or persons on behalf of the Carrier paying any claim for loss of or damage to any of the said goods, they shall be subrogated to that extent in the rights of the owner shipper, consignee, and or insured with respect to any insurances that may have been effected upon or on account of the said goods, and entitled in every way to the full benefit of any such insurances with respect to the amount so paid.

20 Also that the Master of the Ship and owners or agents shall have a lien on and right of sale over the goods not only for the freight and charges herein and for all payments made and liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods but also for all previously ascertained freight and charges due to them by the consignees, and whether payable in advance or not at the port of shipment or not. That the shipper and/or owner of the goods are liable together and separately for such freight and charges and for all other expenses incurred in the onset of goods ascertained or refused by consignees and sold by company's agents or by Customs, and remaining sufficient to pay same in full.

21 Carrier is not required to notify Consignees of arrival of goods

22. General Average payable according to York Antwerp Rules, 1890, and as the shipowners option as to matters not provided for in York Antwerp Rules according to the laws and usages of the Dominion of Canada or the port of delivination. If the owner shall have exercised due diligence to make the ship, in all respects, seaworthy and to have her properly manned, equipped and supplied, in so hereby agreed that, in case of danger, damage or disaster resulting from fault or error in navigation, or in the management of the ship, or from any latent defect in the hull, machinery or appurtenances, whether existing at the time of shipment or at the beginning of the voyage, the consignees of the goods or the owners of the ships shall not contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common perils all with the same force and effect and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned from faults or errors in navigation, or in the management of the ship or from the negligence of the master mariners, engineers or pilots or from any latent defect, or unseaworthiness. The owners of the goods shall, before delivery of same make the average bond and pay to the ship or her agents such reasonable deposits towards the average expenses as they may require.

23 Special conditions: Pacific Coast water carriage shall also apply to goods to be subsequently forwarded by rail, until the goods are actually on board cars and no rail shipments to be subsequently forwarded by Pacific Coast water carriage from these goods are solicited from ours.

24. This Bill of Lading is issued subject to all the terms and provisions of, and all the exemptions from liability contained in "THE WATER CARRIAGE OF GOODS ACT" enacted by Dominion Parliament of Canada, Chap. 61 of Statutes of Canada, 9-10 Edw. VII, Section 4 of which is as follows

"4. Where any Bill of Lading or similar document of title to goods contains any clause, covenant or agreement whereby:

(a) The owner, charterer, master or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from negligence, fault or failure in the proper loading, stowage, custody, care or delivery of goods received by them or any of them to be carried in, or by the ship; or

(b) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip and supply the ship, and make and keep the ship seaworthy, and make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation are in anywise lessened, weakened or avoided; or

(c) the obligations of the Master, officers, agents or servants of any ship to carefully handle and stow goods, and to care for, preserve and properly deliver them, are in anywise lessened, weakened or avoided; such clause, covenant or agreement shall be illegal, null and void, and of no effect unless such clause, covenant or agreement is in accordance with the other provisions of this Act."

(B) With respect to Railway Carriage

The following conditions are the only conditions applicable to the shipment while being transported by rail and do not apply to Pacific Coast water carriage

Sec. 1 The Carrier of any of the goods herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided.

Sec. 2 In the case of shipments from one point in Canada to another point in Canada, or where goods are shipped under a joint tariff, the Carrier issuing this Bill of Lading, in addition to the other liabilities hereunder, shall be liable for any loss, damage, or injury to such goods from which the other Carriers is not by the terms of this Bill of Lading relieved, caused by, or resulting from the act, neglect, or default of any other Carrier on which such goods may be delivered in Canada, or under such joint tariff or over whose line or lines such goods may pass in Canada, or under such joint tariff to the same extent as if such loss had occurred on the line of the Carrier issuing this Bill of Lading. The Carrier issuing this Bill of Lading shall be entitled to recover from the other Carrier on whose line or lines the loss, damage or injury to the said goods shall have been occasioned, the amount of such loss, damage or injury, as it may be required to pay by reason thereof, or by reason of any judgment or proceedings thereof. Nothing in this section shall deprive the holder of this Bill of Lading or party entitled to the goods of any remedy or right of action, which he may have against the Carrier issuing this Bill of Lading or any other Carrier.

Sec. 3 The Carrier shall not be liable for loss, damage or delay to any of the goods herein described, caused by the act of God, the King's or public enemies, riots, strikes, defect or inherent vice in the goods, or the act or default of the shipper or owner, for differences in weights of grain, seed or other commodities caused by natural shrinkage or during transit, the consignee only can sue, and by the Carrier, unless the weights are ascertained by Government certificate, the authority of law or by examination, or for any damage or delay caused by the order or direction of the Government or any of its officers, or by the order or direction of any legal tribunal, after written notice of the arrival of said goods at destination or at point of export if intended for export and not covered by a through Bill of Lading has been sent or given the Carrier's liability shall be that of warehousemans only. Except in case of negligence of the Carrier (and the burden of proving freedom from such negligence shall be on the Carrier), the Carrier shall not be liable for loss, damage or delay occurring while the goods are stopped and held in transit upon the request of the party entitled to make such request. When in accordance with general custom, on account of the nature of the goods, or at the request of the shipper the goods are transported in open cars, the Carrier is not liable for loss or damage by fire to which cause the liability shall be the same as though the goods had been carried in closed cars; shall be liable only for negligence, the burden of proving freedom from such negligence shall be on the Carrier.

Sec. 4 No Carrier is bound to transport said goods by any particular train or vessel or on time for any particular market or otherwise than as required by him unless by specific agreement endorsed hereon. Every Carrier in case of physical necessity shall have the right to forward said goods by any railway or steam vessel between the point of shipment and the point of destination, but if such diversion be from a rail to a water route the liability of the Carrier shall be the same as though the entire carriage were by rail.

Sec. 5 In case of any loss or damage for which any Carrier is liable shall be recognized on the basis of the value of the goods at the place and time of shipment under this Bill of Lading (including the freight and other charges, if paid, and the duty if paid or payable, and not refunded) unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classifications or tariffs upon which the rate is based in any of which cases such lower value shall be the amount to govern such computation, whether or not such loss or damage arises from negligence.

When under the terms of the classification or special reduced tariffs, the goods are carried at owner's risk such conditions are intended to cover only such risks as are commercially incidental to transportation, and shall not relieve the Carrier from liability for any loss, damage or delay which may result from any negligence or omissions of the Carrier or its agents or employees and the burden of proving freedom from such negligence or omissions shall be on the Carrier.

Sec. 6 Unless notice of claim be given in writing to the Agent at the point of delivery, or to the Carrier at the point of origin, within four months after delivery of the goods, or in case of failure to make delivery then within four months after a reasonable time for delivery has elapsed, the Carrier shall not be liable.

Any Carrier or party liable on account of loss of or damage to any of said goods on receiving the same or the proceeds paid in respect thereof shall have the full benefit of any conveyance that may have been effected upon or on account of said goods so far as this shall not avoid the policies or contracts of insurance.

Sec. 7 Goods to be delivered to a point where the Carrier has no station or facilities for delivery shall be deemed delivered when a notice of the arrival of such goods has been sent or given to the consignee at the point of destination, unless otherwise specially noted hereon, unless the goods is not promptly unloaded after notice of arrival has been sent or given to the consignee.

Sec. 8 Goods not removed by the party entitled to receive them within forty-eight hours (exclusive of legal holidays) or in the case of bonded goods, within seventy-two hours (exclusive of legal holidays) after notice has been sent or given may be kept in our station or place of delivery, or warehouse of the Carrier subject to a reasonable charge for storage and to the Carrier's responsibility as warehousemen only, or may, at the option of the Carrier after written notice of the Carrier's intention to do so has been sent or given to the consignee, be removed to and stored in a warehouse at the risk of the owner and there held at the risk of the owner and without further notice to the party entitled to receive the goods or to the owner of the goods or to any other person, the Carrier's responsibility shall cease and a reasonable charge for storage and cartage may be collected by the Carrier.

Goods to be loaded shipped from a private siding or a station, wharf or loading where there is no duly authorized agent shall be at the risk of the owner until the car is billed or Bill of Lading is issued by the Carrier and thereafter shall be at the risk of the Carrier. Goods to be loaded destined to a private siding or station, wharf or loading where there is no duly authorized agent, shall be at the risk of the Carrier until placed on the delivery siding.

All goods shall be subject to customary compress and wharfage at owner's cost.

Sec. 9 No Carrier shall be bound to carry any documents, specie or any articles of extraordinary value not specifically stated in the published classifications or tariffs unless a special agreement to do so in the form of a special agreement and the agreed or declared value of such property and a stipulated value of the articles are endorsed hereon. If such goods are carried without a special agreement and the nature of the goods is not disclosed hereon, the Carrier shall not be liable for any loss or damage thereto.

Sec. 10 The owner or consignee shall pay the freight and all other lawful charges accruing on said goods, and if required shall pay the same before delivery. If upon inspection it is ascertained that the goods shipped are not those described in this Bill of Lading, the freight charges must be paid upon the goods actually shipped, with any additional penalties lawfully payable thereon.

Sec. 11 Except in case of alteration from rail to water routes, which is provided for in Section 6 hereof, and except as provided hereafter, if all or any part of said goods is carried by water over any part of said route such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this Bill of Lading, not inconsistent with such statute or the section and without limiting the generality of the foregoing it is agreed that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lake sea or other waters, or from explosion, bursting of boilers or breakage of shafts or any defect in the vessel, or for the negligence of the Carrier or from any latent defect in hull, machinery or appurtenances, or from collision, stranding or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the goods herein described shall be at liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be regarded as including lighterage or car ferriage across rivers or in lake or other harbors, and the liability for such lighterage or car ferriage shall be governed by the other sections of this contract. If the goods are being carried under a tariff which provides that any Carrier or terminal party thereto shall be liable for loss from perils of the sea, then as to such Carrier or Carriers the provisions of this section shall be modified in accordance with the provisions of the tariff which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 12 Every party, whether principal or agent, shipping explosives or dangerous goods without previously full written disclosure to the Carrier or its agents of their nature shall be liable for all loss or damage caused thereby and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 13 No alterations, additions or erasure in this Bill of Lading shall be signed or initialed in the margin by an agent of the Carrier issuing the same and if not so signed or initialed shall be without effect and this Bill of Lading shall be enforceable according to its original tenor.

And FINALLY in accepting this Bill of Lading, the Shipper, Owner and Consignee of the goods and the holder of the Bill of Lading agrees to be bound by all its stipulations, exemptions and conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee or Holder.

RESPONDENT'S EXHIBIT "I."

[Letter-head of Williams, Dimond & Co.]

Dec. 18, 1919.

San Francisco, December 16th, 1919.

No. 500—EO

California Wine Association,
216 Pine Street,
San Francisco.

Gentlemen:

SS. "WEST ALETA."

This will confirm reservation of space for your account covering shipment of 2000 barrels of Wine to be forwarded from here to Rotterdam on the above named steamer, as per our telephone conversation of even date.

1000 barrels of Wine, previously booked for shipment on this steamer have been transferred for shipment on the SS. "Cockaponset." This leaves a total of 4100 barrels of Wine to be forwarded from here to Rotterdam on the SS. "West Aleta."

We are now issuing shipping permits and receiving cargo on Pier 28 for this steamer.

Thanking you for your kind co-operation, and awaiting your further pleasure, we remain

Yours faithfully,

WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER,
General Freight Agent.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "I." Filed Jan. 2, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "J."

[Letter-head of Williams, Dimond & Co.]

San Francisco, December 8th, 1919.

No. 500—EO

Messrs. Rosenberg Bros. and Co.,
334 California St.,
San Francisco.

Gentlemen:

Attention, Mr. Higgins.
SS. "WEST ALETA."

Referring to your favor of the 4th instant, file HRH,—this will confirm reservation of space for your account covering shipment of 500 tons of Rice or Beans to be forwarded from here to Hamburg on the above-named steamer.

We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,
WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER,
General Freight Agent. O

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "J." Filed Jan. 2, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "K."

[Letter-head of Williams, Dimond & Co.]

San Francisco, December 10th, 1919.

No. 500—EO

Messrs. Rosenberg Bros. and Co.,
334 California Street,
San Francisco.

Gentlemen:

SS. "WEST ALETA"

This will confirm reservation of space for your account covering shipment of 250 tons of Rice and Beans to be forwarded from here to Hamburg on the above named steamer.

We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,
WILLIAMS, DIMOND & CO.,
Managers & Operators.
F. A. HOOPER,
General Freight Agent.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "K." Filed Jan. 2, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "L."

CALIFORNIA WINE ASSOCIATION,
216 Pine Street,
San Francisco, California.

January 23, 1920.

Fireman's Fund Insurance Co.,
California & Sansome Sts.,
San Francisco, Cal.

(Received Jan. 23, 1920. H. D. S.)
(Please refer your reply to AB/BL).

Gentlemen:

Attention: Mr. SWALES.

Please be advised that the following is our final and complete specifications for insurance per the Stmr. "WEST ALETA" which sailed from San Francisco on or about January 6th.

To Cardiff, Wales, 11000 barrels wine—valuation $456955.00.

To Rotterdam, 1108 barrels Brandy—1250 barrels wine—valuation $120493.00.

To Rotterdam (marked Geneva), 1742 barrels wine —valuation $65423.00.

The above is to cover insurance for both Marine and War risk. We understand that the Geneva lot is to be insured as far as Rotterdam only.

Will you kindly send policies to us at the earliest possible moment?

Very truly yours,
CALIFORNIA WINE ASSOCIATION.
By A. BARRICKS,
Assistant Sales Manager.
J. M. B.

[In pencil]:

456955
120493
65423

642871

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "L." Filed Jan. 6, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "M."

No. 2471

WILLIAMS, DIMOND & CO.

AGENTS

San Francisco, 1/2 19——

Freight Clerk—W. Aleta.

Please receive the under mentioned goods from S. L. Jones & Co.

Destination—Hamburg.

Marks and Numbers	Packages	Contents	Meas.	Weight
Joseph	1 cs	samples—Cd fish,	2	50
Herrscher		copra cake, cocoa		
Hotel Bristol		beans, milk, jams, beans, prunes		
Berlin		Dec 78040		
Germany		Strapped		

NOTICE—This is simply a shipper's permit, and does not bind the vessel to receive the goods.

Packages in bad order must not be received, but must be returned to be put in good shipping order.

All goods at owner's risk while on wharf awaiting loading.

Freight will not be received after 1/2/24

WILLIAMS, DIMOND & CO.,

Agents.

PERMIT

Per DE BENJAMIN.

U. S. P.C.O. 20M 2-19

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

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Received in apparent good order and condition, from H. L. Jesse & Co.

at San Francisco, ; marked and numbered as below (weight, quality, contents and value unknown) to be transported by the ship Wm. Hale, now at or to arrive at the port of shipment, to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with leave to sail with or without pilots, to tranship to any other vessels operated by said Corporation, or said Board, or for its account, to lighter from vessel to vessel and from vessel to shore, to tranship either by rail, lighter or otherwise, to transfer to and from hulk, and to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once, unto the port of Bremen (or so near thereto as the vessel may safely get), and there deliver in like apparent good order and condition, at the vessel's tackles, unto Order or assigns, freight being paid as hereinafter set forth, they paying average accustomed (if any incurred). Hotel Bristol, Berlin.

Marks and Nos.	Packages	Contents	Gross Weight
Joseph Herrmann Hotel Bristol Berlin, Germany United States District Court No. 17692 vs. Respondent's Exhibit No. M. Jan. 6, 1925 WALTER B. MALING, Clerk J. W. Schaarbye Deputy Clerk	1 Case	Samples - Cd. Fish, Copra Cake, Cocoa Beans, Nuts, Jute, Rope, Prunes	50 Lbs.
		The vessel shall have liberty for the purpose of ... trial trips and shall ... reasonable increased ... cargo insurance, if any, ... in consequence thereof.	
			4748

Freight Charges

XX 50# - MINIMUM B/L $3.25

SAMPLES RATE 100# MINIMUM;

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
FILED
JAN 4 - 1926
F. D. MONCKTON
CLERK

Rates, weight and/or measurement subject to correction.

Prepaid freight to be considered as earned and not to be repaid to shipper, even if there be a forced interruption or abandonment of the voyage at the port of loading, a port of distress, the port of delivery or any other port into which the ship may put or be taken, and even if the vessel or goods be lost, delayed or damaged at any stage of the entire transit, and/or after goods be unloaded from the vessel, without negligence on the part of the master with negligence in navigation or management of the vessel, and not to contribute in General Average; and on the happening of any of the contingencies herein mentioned the said vessel is to have the right to forward the above mentioned cargo to the port of destination, and shall receive extra compensation for such service, whether performed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, or those of strangers; and in case of salvage services rendered to aforesaid merchandise or treasure during the voyage by a vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage services shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

It is mutually agreed that the ship shall have liberty to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the ordinary course of her voyage, or should the goods or any part of them be shut out from the vessel, that the carrier is authorized but not compelled to forward or tranship the goods to their destination by any other vessel, steam, motor or sail, at shipper's risk.

It is also mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond its control, or by the perils of the sea or other waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by public enemies, arrest and restraint of princes, rulers or people, riots, strikes or stoppage of labor, by explosion, or bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collision, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the shipowner or operator of the ship not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager, by unseaworthiness of the ship, even existing at the time of shipment or during the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy, nor for or by heating, explosions of cargo, rats, decay, frost or any effects of climate, heat of hold, decay, putrefaction, decomposition, rancidity, rust, presence of foreign matter upon and/or in containers and/or upon and/or mingled with goods, injury to or soiling of wrappers or packages, chafing, sweat, change of character, smell, evaporation or damage from any other goods, drainage, leakage, breakage, rats, vermin, or damage or deterioration caused by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages, or injury from hooks; nor for result of tearing or breaking or bursting of containers or packages; nor for land damages whether on wharf or elsewhere; nor for the obliteration, error, insufficiency, or absence of marks, numbers, addresses or descriptions; nor for risk of craft, hulk or transhipment, including any transfer on lighters; nor for any loss or damage caused by the prolongation of the voyage; nor for damages of any kind to articles perishable in their nature; that the carrier shall not be concluded as to the correctness of statements herein as to quantity, quality, weight, contents and value; and that the ship or ships on which such goods are carried are not warranted seaworthy as to any defect or deficiency not discoverable by due diligence of the owners.

It is also mutually agreed that the General Average shall be settled at San Francisco according to York-Antwerp Rules of 1890, and as to matter not therein provided for according to the law and usage of the Port of San Francisco.

This contract is subject to all the stipulations and agreements herein set forth on either side hereof, whether stamped or printed, whether or not usual or customary, and whether or not in one or several paragraphs. All said paragraphs are to be construed together.

AND FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of a special contract, whether or not signed by the shipper.

IN WITNESS WHEREOF, the Master or Agent of the said ship has affirmed to 2 Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in San Francisco, this 21 day of January, 1926

Accepted as to all the terms and conditions hereof.

SHIPPERS By WILLIAM [illegible] MASTER OR AGENTS

SHIPPERS ARE REQUESTED TO CAREFULLY READ THIS BILL OF LADING, WHICH CONSTITUTES THE CONTRACT BETWEEN THE SHIPPER OR AGENT OF THE OWNER OF THE PROPERTY CARRIED AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

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ADDITIONAL STIPULATIONS AND AGREEMENTS OF THIS BILL OF LADING

IT IS ALSO MUTUALLY AGREED:—

1. That the carrier shall not be liable for articles comprised in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof be given at the time of lading and entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton), each short ton that is shipped being represented and agreed by the shipper as being of no greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value.

3. Also that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value.

4. Also that the shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be landed slack or torn, the consignees shall accept such proportion of the sweepings as shall be allotted by the agents of the carrier, and the same shall be deemed a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, surf, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a letter being put into the postoffice addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the master or carrier shall have the right under any and all circumstances, at his option, and without notice, to tranship the goods at carrier's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods; and if this in his judgment is inexpedient, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, as the authorities of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignees by day and by night as fast as the vessel can deliver, consignees paying all landing charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the packages before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or if for non-delivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for non-delivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are carried in receptacles of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper as to each such receptacle to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignees shall accept such proportion of the oil or other fluid which has leaked from its receptacles (and from any other receptacles on said vessel containing oil or other fluids) and run into the bilges, or elsewhere, as may be allotted by the carrier or his agents, and such allottment shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of cooperage, of repairs to packages, of bailing or rebaling, or sacking or resacking of goods, incurred by the carrier, shall be repaid to the carrier by the shipper, and the carrier shall have a lien for such charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Revised Statutes, 4281 to 4287, and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc." Provided that in all cases where merchandise or property is transported under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States of America against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipments shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as struck out and expunged, and all provisions herein shall be construed in connection with the provisions of such Act and be valid as far as consistent therewith.

16. Also, that as to all goods landed at Manila or at other Philippine ports, the cargo, in accordance with the regulations of the Philippine's customs service, is to be conveyed, by the ship's agents, at consignee's risk and expense, from the steamer to the Custom House wharf, and there delivered into the custody of the United States Custom House, for account of the consignee; and such delivery shall constitute a full discharge of the carrier's obligation, under this bill of lading, unless it be made to appear that exception was taken to the sufficiency of the delivery, by the customs authorities or employees when the goods were delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignees or their agents, in writing, to the ship's agents at Manila, within ten days after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, agents or master shall be liable therefor.

17. Also, that if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

18. Also, that if the shipment hereunder is made at an Australian port, this Bill of Lading is to be read and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been cancelled and eliminated therefrom prior to the execution thereof, and is issued subject to all the terms and provisions of and to all the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or as heretofore set forth to tranship.

20. Also, that the carrier shall not be responsible on shipments of lumber, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, flaws or discolorations.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims to any lien thereon are hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail when in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this bill of lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

RESPONDENT'S EXHIBIT "N."

ROSENBERG BROS. & CO.
334 California Street.

Cable Address
"Rosenberg"
All Codes.

San Francisco, Cal., Dec. 4, 1919.
In Reply Please Refer to File HRH.
Williams, Dimond & Co.
Received S. F.
Dec. 5, 1919.
Ans'd 12/8. O.

Williams, Dimond & Co.,
310 Sansome St.,
San Francisco, Cal.

Gentlemen:

Confirming 'phone conversation with Mr. Clark:

Please book for our account 500 tons of rice or beans to Hamburg, on S. S. "West Aleta."

[In pencil:] Firm Please Confirm.

We thank you for option on an additional 1000 tons on this ship, good until night of the 8th inst.

Yours truly,
ROSENBERG BROS. & CO.

LB

[Endorsed]: United States District Court No. 17,692. Respondent's Exhibit "N." Filed Jan. 7, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 4748. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan: 4, 1926. F. D. Monckton, Clerk.

RESPONDENT'S EXHIBIT "O."

December 10th, 1919.

500–EO.

Messrs. Rosenberg Bros. and Co.,
334 California Street,
San Francisco.

Gentlemen:

SS. "WEST ALETA."

This will confirm reservation of space for your account covering shipment of 250 tons of Rice and Beans to be forwarded from here to Hamburg on the above named steamer.

We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

Thanking you for this business, and awaiting your further pleasure, we remain

Yours faithfully,

H.

[Endorsed]: United States District Court. No. 17,692. Respondent's Exhibit "O." Filed Jan. 7, 1925. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

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Office Supreme Court, U. S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 119

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

ROSENBERG BROTHERS & COMPANY

No. 120

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

CALIFORNIA WINE ASSOCIATION

No. 121

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

S. L. JONES & COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

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No. 119

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS OF THE COURTS BELOW

Two opinions were filed in the District Court. They appear at pages 21 and 671 of the record and are reported in 295 Fed. 372 and 7 F. (2d) 893.

The opinion of the Circuit Court of Appeals appears at page 845 of the record and is reported in 12 F. (2d) 721.

JURISDICTION

The decrees of the Circuit Court of Appeals (R. 856, 857, 858) were entered May 10, 1926. Rehearings were denied on June 14, 1926. (R. 865, 867.) The petition for certiorari was filed September 4, 1926. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

The questions presented in the petition for certiorari, in so far as they are here expressly relied upon, may be stated as follows:

1. Does the Suits in Admiralty Act, March 9, 1920, c. 95, 41 Stat. 525, provide an exclusive remedy and bar these actions because not commenced within the prescribed period?

2. If the Suits in Admiralty Act does not, *ex proprio,* bar these actions, nevertheless must the district court when determining laches be guided by analogy to Federal statutes relating to maritime causes rather than to varying State statutes of limitation?

3. Did the ship, being obligated by contract with each of the respondents to call also at the port of Hamburg, having advertised to sail for "Hamburg, Rotterdam, and Cardiff," carrying only nonperishable cargo, and being privileged under the bill of lading "to touch

at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once," deviate, as to Cardiff and Rotterdam cargoes, by sailing directly for Hamburg (the most distant of the three) as her first port of call?

STATUTES

The pertinent statutes are printed in the argument or appendix.

STATEMENT

These are separate libels against the Fleet Corporation instituted by the respondents to recover the value of goods owned by them and shipped in December, 1919, and January, 1920, during the World War, under separate bills of lading, for carriage from San Francisco, California, to Rotterdam, Holland, and Cardiff, Wales, on the Steamship *West Aleta,* which carried also goods of these respondents under other bills of lading for Hamburg, Germany. The ship, owned by the United States, was seaworthy, properly manned and equipped. Through an error of navigation she stranded while off the coast of Holland, and, with her cargo, became a total loss. The respondents (libelants below) claim, and rely upon, a deviation, in that at the time of the stranding the vessel had passed the entrances to the ports of Cardiff and Rotterdam and was on her way to Hamburg, the most distant of the three intended ports of call. Petitioner denies that there was any deviation.

The three causes were consolidated and tried together in the District Court for the Northern District of California. Decrees in favor of the libelants were affirmed by Circuit Court of Appeals for the Ninth Circuit on May 10, 1926.

The principal facts are stipulated. (R. 77, 746, 808.)

The *West Aleta*, at all the times herein mentioned, was owned by the United States of America, documented in the name of the "United States, represented by United States Shipping Board," and was managed and operated by the Fleet Corporation through Williams, Dimond & Company, as operating agents, under written contracts dated September 18, 1919, between the United States Shipping Board Emergency Fleet Corporation and the said Williams, Dimond & Company. (R. 83, 90.)

Between December 4, 1919, and January 6, 1920, the vessel was advertised in "The Guide" and the "Daily Commercial News," leading commercial papers of San Francisco, in this language (R. 80, 106):

EUROPEAN PACIFIC LINE
Direct Sailings

* * * * *

S. S. *West Aleta*
(for Hamburg, Rotterdam and Cardiff)

* * * * *

WILLIAMS, DIMOND & CO.
Managers and Operators for
U. S. Shipping Board

Respondents Rosenberg Brothers & Company and S. L. Jones & Company were subscribers to the "Daily Commercial News." (R. 216.) All of the respondents were subscribers to "The Guide." (R. 214.)

The respondents shipped for carriage by her the following goods, for the value of which recovery is sought in these proceedings: Rosenberg Brothers & Company, twenty-one hundred and eighty sacks of rice for Rotterdam. California Wine Association, eleven thousand barrels of wine for Cardiff; eleven hundred and eight barrels of brandy and twenty-nine hundred and ninety-two barrels of wine for Rotterdam. S. L. Jones & Company, eighty-two cases of nutmegs for Rotterdam. In addition to the foregoing all of the respondents shipped merchandise by the same vessel to Hamburg. (R. III, p. 89 et seq.)

The ship sailed from San Francisco on January 6, 1920, under orders which directed the master to proceed—

> via the Panama Canal, and the most direct and safest route to Hamburg, Germany, which will be your first port of discharge. After discharging your Hamburg cargo, you will proceed to Rotterdam, Holland, to discharge the cargo you have for that port, and thence to Cardiff, England, your last port of call, where you will discharge your cargo for that port. (R. 57.)

She then had on board six hundred and sixty-one tons of merchandise for Hamburg, fifteen hundred

and three tons for Rotterdam, and two thousand six hundred and thirty-four tons for Cardiff, including goods consigned by shippers other than the respondents. The Cardiff and Rotterdam cargo consisted chiefly of barrels of wine, brandy, and oil, and were prudently stowed (R. 80) principally in the lower holds with the Hamburg cargo on top. The Wine Association contracted with express knowledge of such stowage and that Cardiff would be the last port of call (R. 219). Its insurance contract read "to Rotterdam and Cardiff"—in this order. (R. 553.)

The bills of lading issued to the respondents were identical in form, save as to description of goods, destination, name of shipper, etc. The Cardiff bill of lading (R. 752), which the court below properly declared might be considered as an exemplar, was signed by Williams, Dimond & Co., and acknowledged receipt of the goods therein described. It expressly gave the vessel—

> *leave * * * to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once.* (Italics ours.)

While proceeding along the direct and customary route to Hamburg, and after having passed the points at which the ship would have altered its course if intending to put in first at either Cardiff or Rotterdam, the ship struck a sand ridge which projected several miles northward from the westerly end of Terschelling Island, off the coast of Holland, shortly after two o'clock on the morning

of February 12, 1920, and with all her cargo became a total loss. (R. 81, 110.) The cause of the stranding was an error of navigation, for which, under Section 3 of the Harter Act, February 13, 1893, c. 105, 27 Stat. 445 (U. S. C., Title 46, Sec. 192), and under express provision of the bills of lading, the carrier is not liable on the contract, unless, as respondents contend, there was a deviation. The theory on which they rely is that by proceeding first to the most distant of the three ports of call and delivery the ship deviated, and thereby lost the benefit of provisions of the bill of lading and of the Harter Act and became liable as an insurer.

All of the cargo covered by the bills of lading here involved was insured under policies containing this clause (R. 553):

> Held covered, at a premium to be arranged, in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel, or voyage.

The underwriters settled with the respondents in full and then instituted these libels as subrogees.

These suits were commenced, in the cases of the California Wine Association and Rosenberg Bros. & Company October 25, 1922 (R. 16, 723), and in the case of S. L. Jones & Company November 19, 1923 (R. 787)—thirty-two months and forty-five months, respectively, after the causes of action arose—February 12, 1920.

The District Court found for the libelants, stated the measure of damages to be the market value of

the goods at the ports of destination at the time the vessel should have arrived, and entered decrees against petitioner, which, on appeal, were affirmed by the Circuit Court of Appeals.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred in holding in each case:

I. That the suit was not barred by the two-year limitation contained in the Suits in Admiralty Act.

II. That if the Suits in Admiralty Act is not applicable, the suit was not barred by laches, thus applying the analogy of the State statute of limitation instead of the Federal statutes.

III. In holding that there was a deviation.

IV. In affirming the judgment of the District Court.

SUMMARY OF THE ARGUMENT

(1) All these actions were brought against the Fleet Corporation in an admiralty court to recover damages *in personam* for maritime causes of action arising out of the operation by the Fleet Corporation of a vessel owned by the United States. These actions were, therefore, covered by the Suits in Admiralty Act.

In the *Eastern Transportation Company* v. *United States,* 272 U. S. 675, 690, this Court held that—

> there may be proper cases under the Act in which there is to be a remedy really *in personam* against the United States, and also

one in substance *in rem* against its vessels for which its own personal liability is substituted.

Since the *West Aleta* was owned by the United States, was acquired by authority of the Act of June 15, 1917 (c. 29, 40 Stat. 182;), and was managed and operated by the Fleet Corporation by direction of the President (Executive Order 2664, July 11, 1917) pursuant to the same Act, when the claims in question arose, the United States was liable for these claims.

The same remedies are given against the Fleet Corporation as against the United States, and since the statute provides remedies, a period of limitation, a rate of interest, a means of satisfying the judgment, including an appropriation (Sec. 8), for all maritime causes of action then existing or thereafter arising out of the operation by a corporation whose capital stock is entirely owned by the United States or a vessel owned or possessed "by the United States or by such corporation," it is submitted that the provisions of the Suits in Admiralty Act are exclusive and bar all actions such as these which were not commenced within the period therein prescribed.

(2) If, however, the Suits in Admiralty Act does not govern and bar these actions, they are, nevertheless, barred by laches. The uniformity so essential in admiralty requires that the court should have been governed by the two-year period of limitation prescribed in this and other Federal statutes governing maritime causes, rather than variant local

statutes—this Court having determined that "the period of time within which an action may be commenced is a material element in such uniformity of operation."

(3) Petitioner also maintains that under the liberties clause in the bill of lading—

> with leave * * * to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once,—

the *West Aleta* did not deviate in calling at Hamburg, Rotterdam, and Cardiff in the reverse of their geographical order.

ARGUMENT

I

THE SUITS IN ADMIRALTY ACT PROVIDED AN EXCLUSIVE REMEDY; AND THESE ACTIONS ARE BARRED BECAUSE NOT BROUGHT WITHIN THE TIME PRESCRIBED

These causes of action arose when the ship stranded, February 12, 1920. (R. 81.) The libels were filed October 25, 1922, in the Rosenberg Brothers and California Wine Association cases, and November 19, 1923, in the Jones & Company case. (R. 4, 710, 779.) The remedy provided by the Suits in Admiralty Act, Section 5, approved March 9, 1920, c. 95, 41 Stat. 525, expired by limitation March 9, 1921.

For the proper presentation of this question brief review of antecedent legislation is necessary. The Corporation was organized by the Shipping Board April 16, 1917, ten days after the entry of the United States into the war, by authority of Section

11 of the Shipping Act 1916 (c. 451, 39 Stat. 728, 731). By that section such a corporation could operate Government-owned tonnage only by order of the President after investigation and report to him by the Shipping Board that private operation was not practicable.

The Emergency Shipping Fund provision of the Act of June 15, 1917 (c. 29, 40 Stat. 182, 183), provided that all ships—

> heretofore or hereafter acquired by the United States

should be managed, operated, and disposed of

> as the President may direct.

The President, by Executive Order of July 11, 1917, delegated to the Shipping Board the operating powers vested in him.

The Act of July 18, 1918 (c. 157, Sec. 15, 40 Stat. 913, 916), provided that the net proceeds of all activities authorized by the Emergency Shipping Fund provision of the Act of June 15, 1917, and activities authorized by other specified legislation should be deposited in the United States Treasury in a separate and distinct fund, and might be expended by the President in carrying out the purposes of the Act of July 18, 1918. Among those purposes was the requisitioning of vessels, wharves, docks, and terminal facilities.

All of the aforementioned legislation, except as Section 11 of the Shipping Act was modified by the Emergency Shipping Fund provision of the Act of June 15, 1917, was in force, as was the Executive

Order, at the time of the shipments in question, in December, 1919, and January, 1920, and at the time of the loss of the vessel with her cargo on February 12, 1920; and the making of the bills of lading and all the operations of the *West Aleta* were subject to and by authority of this legislation and that Executive Order; and the operation of this vessel was financed, as all of the other activities of the Fleet Corporation were financed, by public appropriations. The Fleet Corporation's only activity in connection with the *West Aleta* was in the capacity of—

> an operating agency of that (United States Shipping) Board;

and it

> was known to be but an arm of the Board. (*The Lake Monroe,* 250 U. S. 246, 252, 254.)

Like the United States Grain Corporation it was—

> owned by the United States as an agency for public service, was not engaged in ordinary merchandising, but * * * was performing public functions arising out of the war and its sequels. * * * The very existence of the Corporation was created to carry on activities required by the war. Its property was held for that and no other end. (*United States Grain Corporation* v. *Phillips,* 261 U. S. 106, 111, 113.)

It was one of

> the instrumentalities created with reference to the needs of that war;

and to defraud it would have resulted—

> directly in a pecuniary loss to the United States, and even more immediately would have impaired the efficiency of its very important instrument. (*United States* v. *Walter,* 263 U. S. 15, 17, 18.)

In *King County* v. *Fleet Corporation,* 282 Fed. 950, and *United States* v. *Coghlan,* 261 Fed. 425, property of this Corporation was held exempt from state taxation because actually it was the property of the United States, and these two cases were cited approvingly by this Court in *Clallam County* v. *United States Spruce Corporation,* 263 U. S. 341, in holding that for a like reason property of the Spruce Corporation was tax free.

As regards the public aspect of their war-time activities under war legislation, this Court has classified the Grain Corporation, the Spruce Corporation, and the Fleet Corporation together, and has made no distinction between any two of them.

The Merchant Marine Act, 1920, approved June 5, 1920 (c. 250, 41 Stat. 988 et seq.), was before Congress at the time of the enactment of the Suits in Admiralty Act on March 9, 1920, so that consideration of certain provisions of the former Act may assist in the construction of the latter.

By Section 11 of the Shipping Act the life of the Fleet Corporation was limited to five years after the close of the war. By Section 12 of the Merchant Marine Act the Shipping Board was directed to continue ship operation until all of the Govern-

ment-owned merchant fleet shall be sold, and the life of the Corporation, with power to operate vessels, was continued until such time; and by Section 35 the Shipping Board was given authority to carry on ship operation directly or through the Fleet Corporation. These provisions were in contemplation when the Suits in Admiralty Act was passed. The remedy provided by that Act is available in all cases *ex delicto* as well as *ex contractu;* in all cases *in personam* as well as *in rem* (*Eastern Transportation Co.* v. *United States,* 272 U. S. 675); whether such operation is in the Government's "sovereign capacity as a war measure," as in the case of the *West Aleta,* or "for the purpose of advancing the trade of its people" (*The Pesaro,* 271 U. S. 562, 574) "for the proper growth of its foreign and domestic commerce" (Merchant Marine Act, 1920, c. 250, Sec. 1, 41 Stat. 988). In either case the vessels "are public ships in the same sense that warships are." (*The Pesaro, supra.*)

The Suits in Admiralty Act prohibits the arrest of any vessel owned, operated, or possessed by or for account of, and of any cargo owned or possessed by the Government, or any corporation of which it owns the entire outstanding capital stock (Sec. 1); provides for suits in admiralty against the Government, "or against such corporation, as the case may be," and that in either case service shall be upon law officers of the Government (Sec. 2); for decree against the Government or the Corporation, with interest, in the discretion of the court,

not exceeding four per centum, except in contract cases where a higher rate is fixed; for exemption from obligation to give a bond in any case; for cancellation of bonds previously given (Sec. 3); for release on suggestion of Government liability of any vessel arrested for a cause arising from previous possession, ownership, or operation of it by the Government or the Corporation, and the subsequent proceeding of the suit against the Government only (Sec. 4); for a limitation of two years after accrual in cases arising after the Act, and one year after the date of the Act in other cases, and confines the scope of the Act to cases arising after the entry of the United States into the war (Sec. 5); for payment with public money, for which the Act makes an appropriation, of any judgment, arbitration award or settlement made by authority of Section 9 (Sec. 8), which authorizes arbitration, compromise, and settlement by the Secretary of a department, the Shipping Board or the board of trustees of the corporation, "having control of the possession or operation of any merchant vessel" (Sec. 9); for recovery by the Government, *not by the corporation,* for salvage services performed by a vessel owned or operated by either, and payment of the proceeds into the public treasury to the credit of the department, the Board, or the corporation having such control (Sec. 10); for payment into the Treasury to the credit of the department, the Board, or the corporation having such control of all recoveries by the Government on causes "arising from, or in connection with, the

possession, operation, or ownership of any merchant vessel," for reimbursement of the appropriation or fund from which the loss, damage, or compensation for which such recovery is had has been or will be paid (Sec. 11); for the report to Congress at each session by the Attorney General of all judgments under the Act for or against the Government or the corporation, and a like report by the Secretary of any department, the Board, and the trustees of the Corporation of all final arbitration awards and settlements made by them respectively (Sec. 12).

This Act has provided a remedy for the satisfaction from Government money (Sec. 8) of all claims of a maritime nature arising out of the operation by this Corporation, or by or for the Government, of merchant ships. It treats the United States and all such corporations exactly alike in almost every respect—as to the remedy, the time to sue, the method of procedure, the measure of recovery, the source of satisfaction, which is the public treasury; it provides for the assumption by the Government of all obligations of such corporations (Sec. 3) and refers to the possession, ownership, and operation of vessels by any other than the Government or such a corporation as *private.* The provision for payment of decrees against the Corporation with public money stamps as public every activity that may form the basis of any such decree. *Chesapeake & Delaware Canal Co.* v. *United States,* 250 U. S. 123, 126; *Van Brocklin* v. *Tennessee,* 117

U. S. 151, 158; *United States* v. *Insley,* 130 U. S. 263, 265.

This Act has provided a system for adjudication and satisfaction of all obligations of this Corporation arising out of the possession, ownership, or operation of ships, and being the subject of admiralty jurisdiction. No other system is provided. Since the only possible recourse is on the public treasury, it is essential in order that the officers of the Treasury may be seasonably advised as to the demands on the Treasury, that the system be exclusive, and that a uniform period of limitation be applied. *Nichols* v. *United States,* 7 Wall. 122; *Arnson* v. *Murphy,* 109 U. S. 238, 243; *Nassau Smelting Works* v. *United States,* 266 U. S. 101; *United States* v. *Pfitsch,* 256 U. S. 547; *Smith* v. *Reeves,* 178 U. S. 436, 445; *United States* v. *Forbes,* 278 Fed. 331.

Both courts below held that this statute did not govern. The Circuit Court of Appeals declared (R. 854):

> The purpose of the Suits in Admiralty Act as construed in the decisions referred to, is to substitute an action *in personam* for one *in rem.* In our case the ship, having been wrecked off the coast of a foreign country, and not having been in any port of the United States at the time the libelants brought these suits, and not having been at that time a merchant vessel, suits *in rem* could not have been brought under the Suits in Admiralty Act.

Its opinion was dated May 10, 1926. On January 3, 1927, this Court definitely disapproved and rejected the theory thus accepted and relied upon. *Eastern Transportation Co.* v. *United States,* 272 U. S. 675, 690.

It was there decided that the remedy afforded by the Suits in Admiralty Act is coextensive with "the general *in personam* liability of the United States as the owner of an offending vessel, like that of a private owner." The statute treats on an exact parity the United States and "any corporation in which the United States or its representatives shall own the entire outstanding capital stock." The proceedings which it authorizes against one are authorized also against the other. The words are "a libel *in personam* may be brought against the United States or against such corporation." In view of the decision in *Eastern Transportation Co.* v. *United States* it necessarily follows that the remedy provided by the Act against "such corporation" is coextensive with its general *in personam* liability.

Thus it is clearly apparent that these proceedings might have been brought under the Suits in Admiralty Act. They must depend upon some Federal statute, for the District Courts have no jurisdiction save such as Congress may confer upon them. And since Section 13 of that Act expressly repealed "the provisions of all other Acts inconsistent herewith," seemingly it alone may be looked to to supply the remedy and to confer the jurisdiction.

These actions are not a mere matter of private concern; the United States has the only real and substantial interest. Judgments against the corporation are to be satisfied out of the public treasury, and the Act itself appropriates public funds for their payment.

A definite procedure is provided, the venue is fixed, but the cause may be transferred to any other District Court in the United States, process must be served upon the United States Attorney within the district, a copy shall be mailed to the Attorney General, such service and mailing shall be sworn to and shall constitute valid service on the corporation, interest shall be allowed at four per centum unless by contract a higher rate has been stipulated, the corporation may not be required to give bond, any bond given in a cause theretofore commenced shall become void upon suggestion of the interest of the United States, definite periods of limitation are provided, an authenticated copy of any judgment shall be presented for payment to the accounting officers of the United States, etc.

It appears from the respondents' brief (p. 12), opposing the petition for certiorari, that the Fleet Corporation is being sued under the general admiralty jurisdiction of the District Court "as a private corporation, in which capacity it is amenable to suit at such places as it transacts business."

The legislation as to the Fleet Corporation and the manner in which it operated and was financed is reviewed and stated in the recent case of the

United States ex rel. Skinner & Eddy v. *McCarl, Comptroller General,* decided October 10, 1927, by this Court. It is there shown how Government-owned private corporations, including the Fleet Corporation, were employed by the United States as its instrumentalities during the World War. The transactions which gave rise to this controversy arose out of the exercise by the Fleet Corporation of powers conferred upon it under the Act of June 15, 1917, which was one of the Acts referred to by the Court in that decision. Under such circumstances it would seem clear that whatever may be said as to the liability of the Fleet Corporation in its private capacity, these causes of action were those for which the United States was certainly liable. Considering the immense number of vessels of the United States which were operated by the Fleet Corporation during and since the War, and the very large number of claims which have been made against the Fleet Corporation and the United States in consequence of such operation, and that all of such claims if valid must be liquidated by the monies of the United States, the problem of adopting a method by which such claims could be settled and paid was one which was of prime importance to Congress. In the same way, the problem as to what should be done with Government-owned vessels, and how claims should be made, sued for, and paid where they arose out of the program of construction handled through the Fleet Corporation, was also of great importance

to the Government, and it is significant that the same Congress at which the Suits in Admiralty Act was passed, the Merchant Marine Act of 1920 was also passed; the first providing the method by which maritime actions should be instituted and prosecuted against the Fleet Corporation and the United States, and the second providing the manner in which Government vessels should be operated and liquidated, and how claims should be made and settled which arose out of or incident to the exercise by or through the President of any of the powers or duties conferred upon the President by any Act or parts of Acts thereby repealed. Notwithstanding the efforts of the Fleet Corporation in the case of *Sloan Shipyards Corporation* v. *U. S. Fleet Corporation,* 258 U. S. 549, to persuade this Court that suit would not lie against the Fleet Corporation on a cause of action accruing before the passage of the Merchant Marine Act, this Court held (p. 570):

> The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States.

It is the contention of the Fleet Corporation in this case that even though under this ruling the Fleet Corporation may be sued in a court of common law or equity for a cause of action within the jurisdiction of such courts, at the same time it is the law that if the Fleet Corporation is sued on a

maritime cause of action in an admiralty court where the cause of action arises out of the operation by the Fleet Corporation of a Government vessel, the Suits in Admiralty Act applies, and if as a matter of fact the suit was brought beyond the time limited in that Act for the bringing of such suits the cause of action is barred, and whatever effect the Shipping Act of 1916 (c. 451, 39 Stat. 728) and Sections 9 and 11 thereof and the statutes of the District of Columbia for the organization of private corporations may have on the question of the right to sue the Fleet Corporation, such right to sue that Corporation was withdrawn by the Suits in Admiralty Act as to all causes of action which come within its scope and tenor.

II

IN ANY EVENT THE ACTIONS WERE BARRED BY LACHES

After deciding that the Suits in Admiralty Act did not apply, the District Court held that the claims were not barred by laches in that "a court of admiralty sitting in this State will by analogy follow its statutes of limitations." (R. 687.) It accordingly applied the local four-year period applicable to cases based upon written contracts. The Circuit Court of Appeals accepted and approved the ruling of the District Court, and this notwithstanding the fact that it affirmed the decree seemingly on the theory that these are tort actions. If its theory was correct, then the three-year period of limitation (Secs. 337, 338, Kerr's Cyc. Codes Calif., 1920, Code

Civ. Proc. pt. 1) would have applied, and the suit of Jones & Co., having been commenced November 19, 1923, would be barred by laches—the cause of action having accrued February 12, 1920, when the ship was lost.

In resorting to the State statute to supply the analogy the court fell into error. Not only the Suits in Admiralty Act but a number of other Federal statutes have prescribed a two-year period of limitation governing causes under maritime jurisdiction. General Salvage Act, c. 268, 37 Stat. 242, U. S. C., Title 46, Secs. 727–731; Section 33, Merchant Marine Act, 1920, c. 250, 41 Stat. 1007; Death on the High Seas Act, c. 111, 41 Stat. 537, U. S. C., Title 46, Secs. 761–768; Public Vessel Act, c. 428, 43 Stat. 1112, U. S. C., Title 46, Secs. 781–790; Cummins Amendment, c. 91, 41 Stat. 456, 494.

These Federal statutes, dealing with related matters, should have been looked to, rather than varying local statutes, to furnish the analogy. "A statute may indicate a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind." *Gooch* v. *Oregon Short Line R. R. Co.*, 258 U. S. 22, 24; *South & Central America Commercial Co.* v. *Panama R. R. Co.*, 237 N. Y. 287.

It is highly desirable, because of the very nature of admiralty and maritime jurisdiction, that there should be uniformity, and this Court has recognized that the desirability of securing this was one of the reasons which prompted the writing into

the Constitution of the applicable provision. *Washington* v. *Dawson & Co.*, 264 U. S. 219, 228; *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 386, 387, and cases therein cited.

Engel v. *Davenport*, 271 U. S. 33, 39, declares:

> The period of time within which an action may be commenced is a material element in such uniformity of operation. And, plainly, Congress in incorporating the provisions of the Employer's Liability Act into the Merchant Marine Act did not intend to exclude a provision so material, and to permit the uniform operation of the Merchant Marine Act to be destroyed by the varying provisions of the state statutes of limitation.

Section 14 of the Shipping Act prohibits unreasonable discrimination in the settlement or adjustment of claims of shippers. This provision is analogous to the antidiscrimination provisions of Section 16 of the Interstate Commerce Act, as amended (c. 3591, Sec. 5, 34 Stat. 584, 590; U. S. C., Title 49, Sec. 16).

In *Phillips* v. *Grand Trunk Ry.*, 236 U. S. 662, this Court held that under that section failure by carrier to plead limitations in one case and not in another or the waiving of limitations was discrimination and beyond the power of the carrier.

Congress could not legislate State statutes of limitation into the maritime law.

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149.

The Lottawanna, 21 Wall. 558, 575.

No more can the same result be brought about by a court so long as these Federal statutes on kindred subjects furnish a closer and uniform analogy. These statutes, rather than diverse State statutes, furnish—

> "a convenient measure of the length of time that ought to operate as a bar in equity of any particular demand." (*Bowman* v. *Walthen,* 1 How. 189, 194.)

III

THE "WEST ALETA" DID NOT DEVIATE IN SAILING DIRECTLY FOR HAMBURG AS HER FIRST PORT OF CALL

The court below held that by directing her course toward Hamburg—the most distant of the three obligatory ports of call—the *West Aleta* deviated as respects the Cardiff and Rotterdam cargoes, and thereby lost the benefit of the Harter Act, c. 105, 27 Stat. 445, 446, and of the provisions of the bills of lading, which otherwise would relieve her of liability because of the error in navigation.

In *Hostetter* v. *Park,* 137 U. S. 30, this Court said (p. 40):

> A deviation is defined to be "a voluntary departure, without necessity or reasonable cause, from the regular and usual course" of a voyage * * *.

Constable v. *National Steamship Co.,* 154 U. S. 51, 66; *S. S. Willdomino* v. *Citro Chem. Co.,* 272

U. S. 718, 727; *Wallem Rederi* v. *Muller & Co.*, 27 Ll. L. Rep. 277.

What voyage did the *West Aleta* contract to perform? If we should look only to the bills of lading, we might infer that there were at least three distinct and unrelated voyages—one to Hamburg, one to Rotterdam, and one to Cardiff—for each bill mentions only the destination of the particular goods which it covers. Thus the Hamburg bill would lead us to believe that the voyage was to Hamburg alone.

Clearly, the voyage of a ship is not to be determined by reference to a single bill of lading.

To what, then, may we look? The vessel was offered to the public for the carriage of freight to "Hamburg, Rotterdam, and Cardiff." Commercial publications containing this announcement were subscribed for by all of the respondents. True, no provision of the written instrument may be varied by reference to the original offer, but the contract does not, and does not profess to, indicate either the *scope* or the *route* of the voyage.

The liberties clause in all the bills of lading was as follows:

> to touch at any port or ports, in any rotation or order in, or out of, the customary route and to call at any port or ports more than once.

The liberties clause should be construed in reference to the service which the *West Aleta* had undertaken to render. She was advertised for the

transportation of goods to Hamburg, Rotterdam, and Cardiff (R. 80, 106) in the leading commercial papers of San Francisco, to which the respondents were subscribers (R. 214). All these respondents had cargo on this vessel for both Hamburg and Rotterdam. The shippers knew the kind of service in which she was engaged; that is, that she was carrying general nonperishable cargo from a number of ports on the Pacific Coast to at least three ports of discharge. Prudent business management requires a vessel to make her ports of call in the most economical manner in reference to her service as a whole. Return cargoes are essential to such economical operation, and the sailing orders directed the vessel to go to Hamburg first, showing the plans for the voyage which were accessible to respondents. The liberties clause should be construed to give greater freedom of choice of route in such a service—that is, from a range of ports to another range of ports—than in a service from one port of loading to one port of discharge. It then becomes a question of the reasonableness of the route selected.

The more weighty and bulky cargo was destined to Cardiff and was prudently stowed (see stipulation, R. 80) in the lower holds, with the Rotterdam and Hamburg consignments chiefly on top. The latter must necessarily have been shifted in order to unlade the first at Cardiff. This, of course, could but make for delay and, by the extra handling, increase the risk of damage. Congested con-

ditions then peculiar to British ports frequently brought about material delays, and shipowners were obligated by wise management to make the inbound or delivery call and the outbound or loading call at the same time. (R. 204.)

Prudent management of the vessel, as well as the best interests of the shippers, considering all the contracts and the scope of the voyage, would suggest that under such conditions Cardiff should properly be the last port of call.

Looking at the thing from a practical viewpoint and considering the length and scope of the voyage, it seems rather immaterial that the first-visited port should happen to be more distant than another, where both ports were within the planned itinerary of the vessel, and not unreasonably far apart.

There is nothing in this case to suggest that this vessel was wandering about the sea heading first for one port and then, without adequate reason, for another, as in *S. S. Willdomino* v. *Citro Chem. Co.*, 272 U. S. 718, 727.

Both the District Court and the Circuit Court of Appeals held that these liberties were confined to ports *between the termini* of the voyage as determined by the port of shipment and the ports of destination. Judge Kerrigan admitted that he did not give the words "in any rotation or order in or out of the customary route" their natural meaning, saying (R. 677):

> This, counsel argue, absolutely disregards the phrase "out of the customary route,"

> because without the use of these words a ship might touch at any such port, and such a construction deprives them of all meaning. That the words quoted may be redundant to the power which they purport to enlarge, without in fact enlarging it, must of course be granted.

The Circuit Court of Appeals adopted the termini theory without qualification. Their language was (R. 848, 849):

> An interpretation of the contract solely by legal import and construction of the words used is that the voyage was to Cardiff, with the privilege of going to other ports in or out of order *between the termini,* in prosecuting the real objects of the adventure intended by the parties. * * * Bringing the principle to the immediate case, the ports to which the *West Aleta* could go were those which, in a business sense, would be passed in the usual course of the voyage from San Francisco to Cardiff. (Italics ours.)

The reasoning with reference to Cardiff cargo was held to apply with equal force to Rotterdam cargo without regard to the difference in distances.

Both courts cite with approval and follow *Smith* v. *Fleet Corporation,* 2 F. (2d) 390 (now pending before the Second Circuit Court of Appeals), where Judge A. N. Hand held that the *West Aleta* on this same voyage deviated as to Rotterdam cargo, basing his decision on the termini theory and the

absence from the liberties clause of the words "or beyond."

In the *Eastern Prince,* 1927 A. M. C. 985, Judge Kerrigan had before him a case where a vessel loaded cargo at Hull, England, for San Francisco and then proceeded to Leith, Scotland, to discharge cargo loaded at San Francisco. This was held a deviation in spite of the broad liberties clause which read (p. 986):

> Either before or after proceeding towards the port of discharge to proceed to and/or stay at any ports or place whatsoever, although in a contrary direction to, or out of *or beyond* the customary route to the said port of discharge, once or oftener, in any order, backwards or forwards, for any purpose whatsoever. (Italics ours.)

In *The Frederick Luckenbach,* 15 F. (2d) 241, at p. 243, Judge Thacher said:

> The rule is one of interpretation, by which the meaning of words having a general significance is confined within the particular purpose of the agreement. But in ascertaining the true sense in which general words are used, the words themselves can not be deprived of all meaning, for this would not be to interpret the agreement *but to erase a part of it.* (Italics ours.)

In *The Blandon,* 287 Fed. 722, Judge Learned Hand said, at p. 725:

> But it must mean to give the ship permission to steam by a different route from that she was otherwise bound to take, besides giving her leave to make ports of call en route; i. e., "in * * * the customary route." Such permission involves delay, and was meant to involve delay. There was no nearer port of lading possible for her than Philadelphia, and the clause was not limited to ports of discharge. When contained in a bill of lading for a mixed cargo, it must be read as intended to give the ship some latitude in making up that cargo.

They both recognized the shipowner's freedom of contract and held that the language used should be given its natural meaning and not a strained construction. Liberties clauses are intended to give vessels latitude in making up their cargo (*The Blandon*, 287 Fed. 722, 726; *The Panola*, 9 F. (2d) 733), and apply to loading and discharging ports and to overlapping voyages.

The *West Aleta* clause purports to give her three liberties:

(1) to touch at any port or ports in or out of the customary route.

(2) to touch at any port or ports in any rotation or order.

(3) to call at any port or ports more than once.

These liberties were intended to allow the vessel to depart from the customary route and to call at

ports in the reverse of their geographical order. She could not call at a port more than once without doubling back. To touch at any port or ports in any rotation or order contemplates reversing the geographical order. They were intended to allow overlapping voyages such as Judge Kerrigan condemned in the *Eastern Prince, supra.* The lower courts admitted that the clause gave the *West Aleta* broad liberties but held that these were confined to ports between the termini of the voyage as determined by the ports of shipment and the ports of destination. On this theory the *West Aleta* could have proceeded to Rotterdam, Cardiff, and Hamburg, in that order, without deviating as to Hamburg cargo, but she would have deviated as to Cardiff cargo. If, instead of having cargo for those ports, the *West Aleta* had cargo for Havre, Antwerp, Rotterdam, Hamburg, and Bremen, she would have had to make all of those ports in geographical order or she would have deviated as to some cargo. It would have been a deviation as to Havre cargo to make Antwerp her first port of call, though it would not have been a deviation as to Rotterdam, Hamburg, and Bremen cargo.

The liberties clause should be construed so as to carry out the general purposes of the contract. Judge Thacher said in this connection in *The Frederick Luckenbach*, 15 F. (2d) 241, at p. 243:

> The rule is one of interpretation, by which the meaning of words having a general sig-

> nificance is confined within the particular purpose of the agreement. But in ascertaining the true sense in which general words are used, the words themselves can not be deprived of all meaning, *for this would not be to interpret the agreement but to erase a part of it.* (Italics ours.)

An interpretation of the liberties clause should be adopted which will give to the words used their natural meaning, so far as this is consistent with the general purposes of the contract. Such interpretation, it is submitted, would permit the vessel to make reasonable departures from the customary route and to call at her ports of discharge in any rotation or order and in the reverse of their geographical order. The voyage in question was a long one and the cargo general and nonperishable. The departure from the shortest geographical route was under the circumstances reasonable and the vessel did not deviate.

The interpretation adopted by the lower courts makes overlapping voyages impossible and increases the cost of steamship operation. If a vessel has cargo for Rotterdam and Hamburg and has a full return cargo at Rotterdam, she would have to call at Rotterdam a second time for her return cargo. There are services where vessels both load and discharge at a number of ports. They may have full cargoes and wish to load more than they discharge at one port or a number of ports; unless the vessel can call at these ports in the reverse of

the geographical order it will be necessary to call at some of them more than once, with the resulting additional expense and loss of time. In some trades, such as those to the West and East coasts of Africa, this may mean depriving some ports of any service at all.

In *The Sidonian,* 34 Fed. 805, the vessel sailed from Genoa for New York (with a cargo of lemons) via Palermo, a port both east and south of Genoa and not between the termini. The bill of lading gave her "liberty to call at any port or ports, in any rotation, for any purpose whatsoever." Judge Benedict held that there was no deviation.

In *London-Savannah Naval Stores Co.* v. *South Atlantic S. S. Line,* 248 Fed. 949, the question was whether a voyage from Pensacola, Florida, to Bristol, England, via a continental port (Antwerp), was a deviation under a bill of lading giving the vessel liberty—

> to call at any port or ports in or out of the customary route, in any order, to receive or discharge coal, cargo, passengers, or for any other purpose.

The District Court held that there was a deviation, using reasoning similar to that of the lower courts in these cases (p. 952):

> According to my construction of the contract, the liberty of call clause did not permit an absolute deviation to all or any particular continental ports. The only ports at which

the vessel was at liberty to call were such as were fairly on the course of the agreed voyage from Pensacola to Bristol.

In reversing the District Court the Circuit Court of Appeals for the Fifth Circuit (255 Fed. 306) said, pp. 310, 311:

> As shown by the terms of the bill of lading stipulated for, the vessel carrying the libelant's rosin and turpentine was to have "liberty to call at any port or ports, in or out of the customary route, in any order whatsoever, to receive or discharge coals, cargo, passengers, or for any other purpose."
>
> There is no law standing in the way of a shipper under a maritime contract binding himself by an agreement that the vessel carrying his goods, constituting only a part of its cargo, is to have the privilege expressed by the provision just quoted. No right of a shipper under such a contract is violated by the vessel carrying his goods going to the port to which they are destined by way of another port, in or out of the customary route, for the delivery of other goods shipped to such other port. * * *
>
> * * * All that libelant was entitled to was performance of the contracts. *Its rejection of the tender because of the respondent's noncompliance with an unwarranted demand that it forego the right which the contracts reserved to it of going to Bristol by way of a continental port justified the respondent in treating the contracts as canceled.* (Italics ours.)

The distance from Antwerp or Rotterdam to Bristol is about the same as that to Cardiff and is much greater than the distance from Rotterdam to Hamburg. In going to Antwerp or Rotterdam the vessel would have to go beyond the termini of a voyage from Pensacola to Bristol.

In *The Blandon,* 287 Fed. 722, on a voyage from New York to Valencia the vessel proceeded to Philadelphia, a port both west and south of New York and beyond the termini, under a bill of lading providing:

> with the liberty to call at any port or ports in or out of the customary route in any order.

Judge Learned Hand held that this was no deviation, saying, at p. 725:

> If these words are to mean anything at all, it seems to me that they must include such a stop as Philadelphia. True, it was not a stop on the customary route; at least, I must assume so on this record. Yet it was expressly agreed that the port might be "out of the customary route." What more limited sense can those words mean than a stop at a place some thirty hours away? It is said that the clause will allow only reasonable deviations, and this is indeed true, since such a clause is to be construed in its context. *Swift & Co.* v. *Furness, etc.* (*D. C.*) 87 Fed. 345. For example, it might not allow a side voyage to Tampico or Galveston; certainly it would not permit a call at Rio or

> Montevideo. But it must mean to give the ship permission to steam by a different route from that she was otherwise bound to take, besides giving her leave to make ports of call en route; i. e., "in * * * the customary route." Such permission involves delay, and was meant to involve delay. There was no nearer port of lading possible for her than Philadelphia, and the clause was not limited to ports of discharge. When contained in a bill of lading for a mixed cargo, it must be read as intended to give the ship some latitude in making up that cargo.

The distance from New York to Philadelphia is 235 miles, and from Philadelphia to Gibraltar is 143 miles farther than from New York. (Table of Distances, Hydrographic Office of the Navy.) The course followed was about 378 miles longer than the shortest geographical route, slightly less than the extra mileage of the *West Aleta* in making Hamburg her first and Rotterdam her second port of discharge.

In *The Frederick Luckenbach,* 15 F (2d) 241, cargo was shipped from Portland, Oregon, to New Orleans and Mobile. The vessel proceeded via Seattle and Tacoma. Judge Thacher, in holding there was no deviation, said, at page 244:

> But here the vessel is authorized "to proceed toward or to, and enter and stay at, or return to, any ports or places whatsoever, although not regular or scheduled or adver-

> tised ports of call, or in a contrary direction to or outside the usual or scheduled route, * * * for the purpose of bunkering or of securing, loading, and/or discharging cargo. * * * All of the matters and operations mentioned in this paragraph are agreed to be within the intended voyage, and not a deviation."
>
> * * * the ship was authorized by the terms of the bill of lading in question to proceed as she did to Seattle and Tacoma for the purpose of securing cargo before proceeding toward the port of discharge.

Seattle and Tacoma are ports beyond the termini of a voyage from Portland to New Orleans. Portland is 380 miles from Tacoma and 94 miles from the entrance to the Columbia River. The departure from the shortest geographical route was almost 600 miles.

In the *Tokuyo Maru* (*W. R. Grace & Co.* v. *Toyo Kisen Kabushiki Kaisha*), 12 F. (2d) 519, the bill of lading gave the vessel liberty—

> to touch at any port or ports in any rotation or order in or out of the customary route. 7 F. (2d) 891.

The voyage was from Iquique and Antofagasta, Chile, to Honolulu. It was admitted that the usual route was via San Francisco. It was held no deviation to proceed to Portland while en route.

No attempt will be made to review all of the English and American deviation cases. Some involve bills of lading with no liberties clause, and others clauses narrower than that of the *West Aleta*. The cases principally relied upon by the lower courts are *Seccomb* v. *Provincial Insurance Co.*, *LeDuc & Co.* v. *Ward*, *Glynn* v. *Margetson*, *Morrison* v. *Shaw*, and *U. S. Shipping Board* v. *Bunge & Born*.

Seccomb v. *Insurance Co.*, 10 Allen, 305, involved a suit on a hull insurance policy. Vessel was insured for a voyage from New York to South American ports, with an indorsement:

> Liberty is given to deviate by going to port or ports in Europe, by paying an equitable premium therefor.

After discharging at South American ports the vessel proceeded to Constantinople and from there made an intermediate voyage from Constantinople to Crimea before loading return cargo for the United States. On the way back she was lost off the American coast. The court held that the intermediate voyage was a deviation. This situation is far different from that here involved.

LeDuc & Co. v. *Ward*, 6 Asp. Mar. L. C. 290, involved a different liberties clause from that in this case. Judge Learned Hand, commenting thereon, in *The Blandon, supra*, declared (p. 725) as follows, page 725:

> The clause read, "to call at any ports in any order," and Lord Esher thought that this meant any ports in the route prescribed. As the voyage was Fiume to Dunkirk, and the ship was lost in the Clyde, it was scarcely possible to excuse her without holding that the clause gave the ship the right to disregard the whole venture. *It is to be noted that the clause did not give her the liberty to call out of the customary route.* (Italics ours.)

Glynn v. *Margetson & Co.*, A. C. (1893) 351, involved a perishable cargo (oranges) and the voyage was so delayed that the cargo perished. Judge Learned Hand commented on it in *The Blandon* as follows, page 726:

> The next case was *Glynn* v. *Margetson*, (1893) A. C. 351, where the voyage was Malaga to an English port. The bill of lading contained a liberty to call in any order at specified Mediterranean ports, this being printed. It was held that in the case of a voyage from a port like Malaga the general clause did not allow of doubling back and forth in the Mediterranean, but was intended to cover only such ports as were in "a business sense" en route. *That clause, too, had no express liberty to call out of the customary route.* (Italics ours.)

In *Morrison & Co.* v. *Shaw, Savill, & Albion Co.*, (1916) 2 K. B. 783, the bill of lading contained two liberties, one in reference to calling at ports of New Zealand and the other in reference to calls made on the voyage from New Zealand to London. The second was a very narrow clause, limiting the vessel's right to call to intermediate ports. The decision was based on the proposition that Havre was not such an intermediate port. Judge Learned Hand commented on this case in *The Blandon,* as follows, at page 726:

> In *Morrison* v. *Shaw* (1916) 2 K. B. 783, the bill of lading had two liberties, one in or out of the customary route to pick up cargo in New Zealand, (which Swinfen Eady, L. J., said arguendo gave her the right to stop where she chose for that purpose in New Zealand), the other "to call and stay at any intermediate port" en route to London. The ship, instead of making direct for London, stood in for Havre and was torpedoed. This was held a deviation, though the judges conceded that it was a close case, and depended upon the degree of the departure. *There can be little or no doubt that, if the liberty beyond New Zealand had been as broad as that within, the result would have been different.* In any event, *it rests upon the finding that Havre is not "an intermediate port" between New Zealand and London.* (Italics ours.)

United States Shipping Board v. *Bunge & Born,* 23 Ll. L. Rep. 257, involved a bill of lading with a

liberties clause which did not grant liberty to call out of the customary route.

The most recent case in this Court wherein consideration was given to the matter of deviation is *S. S. Willdomino* v. *Citro Chem. Co.*, 272 U. S. 718. The bill of lading contained a liberty clause on a voyage from Messina to New York "with liberty to call at intermediate ports or any port or ports in or out of the customary route in any order, to receive and discharge coal, cargo, passengers, and for any other purposes." She called at Lisbon and cleared for New York, with insufficient coal to get her there. Because of turbine trouble she stopped at the Azores, but notwithstanding that one of two turbines was disabled, with insufficient coal, cleared again for New York. After proceeding five or six days toward New York it became manifest that there was not enough coal to make that port, and thereupon she radically changed her course and proceeded to North Sydney, where she arrived with sixty-two tons.

> Whether the intention was to proceed directly from Ponta Delgada to New York, as Counsel for the petitioner are said to have maintained below, or to North Sydney, as they now insist, there was inexcusable departure.
>
> * * * * * * * * If the *Willdomino* had the privilege of going from Ponta Delgada to North Sydney and intended so to do, it was her duty

to take the ordinary course. This she did not do. (272 U. S. 727.)

CONCLUSION

It is respectfully submitted that the decree of the Circuit Court of Appeals should be reversed and the cause remanded to the District Court with directions to dismiss the libels.

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NOVEMBER, 1927.

APPENDIX I

SHIPPING ACT, 1916, SEPTEMBER 7, 1916, C. 451, 39 STAT. 728, AS AMENDED BY THE MERCHANT MARINE ACT OF 1920, C. 250, 41 STAT. 988 (U. S. C., TITLE 46, SECS. 804, 810, 811)

SEC. 3. That a board is hereby created to be known as the United States Shipping Board and hereinafter referred to as the board. The board shall be composed of seven commissioners, to be appointed by the President, by and with the advice and consent of the Senate; and the President shall designate the member to act as chairman of the board, and the board may elect one of its members as vice chairman. Such commissioners shall be appointed as soon as practicable after the enactment of this Act and shall continue in office two for a term of one year, and the remaining five for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and two shall be appointed from the States touching the Pacific Ocean, two from the States touching the Atlantic Ocean, one from the States touching the Gulf of Mexico, one from the States touching the Great Lakes and one from the interior, but not more than one shall be appointed from the same State. Not more than four of the commissioners

shall be appointed from the same political party. A vacancy in the board shall be filled in the same manner as the original appointments. No commissioner shall take any part in the consideration or decision of any claim or particular controversy in which he has a pecuniary interest.

Each commissioner shall devote his time to the duties of his office, and shall not be in the employ of or hold any official relation to any common carrier or other person subject to this Act, nor while holding such office acquire any stock or bonds thereof or become pecuniarily interested in any such carrier.

The duties of the board may be so divided that under its supervision the directorship of various activities may be assigned to one or more commissioners. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business. The board may employ within the limits of appropriations made therefor by Congress such attorneys as it finds necessary for proper legal service to the board in the conduct of its work, or for proper representation of the public interest in investigations made by it or proceedings pending before it whether at the board's own instance or upon complaint, or to appear for or represent the board in any case in court or other tribunal. The board shall have such other rights and perform such

other duties not inconsistent with the Merchant Marine Act, 1920, as are conferred by existing law upon the board in existence at the time this section as amended takes effect.

The commissioners in office at the time this section as amended takes effect shall hold office until all the commissioners provided for in this section as amended are appointed and qualify.

* * * * *

SEC. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: *Provided,* That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel—

(*a*) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(*b*) Which is under the registry or flag of a foreign country which is then engaged in war;

(*c*) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purposes specified in this section;

(*d*) Which, upon expert examination made under the direction of the board, a written report

of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel.

* * * * *

SEC. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States.[e] The total capital stock thereof shall not exceed $50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved.[7] The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

SEC. 12. * * *

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board.

APPENDIX II

ACT OF JUNE 15, 1917, EMERGENCY SHIPPING FUND, C. 29, 40 STAT. 182

1. The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(*a*) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

* * * * *

(*e*) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * *

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time

to time: *Provided,* That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

* * * * *

For the operation of the ships herein authorized or in any way acquired by the United States, except those acquired for the Army or Navy, and for every expenditure incident thereto, $5,000,000.

APPENDIX III

Executive Order No. 2664, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June

thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE,
11 July, 1917.

APPENDIX IV

ACT OF JULY 18, 1918, C. 157, SEC. 15, 40 STAT. 913

SEC. 15. That all vessels of which the possession or services are requisitioned under this Act, and all dry docks, wharves, loading or discharging terminal facilities, warehouses, equipment, or terminal railways, of which the President may acquire the title or possession or of which he may assume control under this Act, may be operated and managed as the President may from time to time direct. The net proceeds derived from any activity authorized in this Act or the joint resolution of May twelfth, nineteen hundred and seventeen (Public Numbered Two), or the division entitled "Emergency shipping fund" of the Act of June fifteenth, nineteen hundred and seventeen (Public Numbered Twenty-three), shall be deposited in the Treasury in a separate and distinct fund and may be expended by the President in carrying out the purposes of this Act, and within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels: *Provided,* That none of the provisions of this Act shall apply to vessels plying exclusively on the inland rivers and canals of the United States.

APPENDIX V

EXECUTIVE ORDER DECEMBER 3, 1918

Delegating to the United States Shipping Board certain powers relating to ocean freight rates and terminal charges.

Whereas sections 6 and 12 of an Act of Congress approved July 18, 1918, entitled "An act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," provide as follows:

"SEC. 6. That the President shall have power to determine, prescribe, and enforce reasonable freight rates and the terms and conditions of affreightment which shall govern the transportation of goods on vessels of the United States, which shall be filed with the United States Shipping Board and open to public inspection. It shall be unlawful to charge or collect any compensation for the transportation of goods on any such vessel, or to enforce or attempt to enforce any terms or conditions of affreightment, or to make or receive any payment or do any act with respect to such transportation, not in accordance with the rates, terms, and conditions so prescribed, anything in any contract, whether heretofore or hereafter made, to the contrary notwithstanding."

"SEC. 12. That the President shall have power to prescribe the order of priority in which persons in possession of dry docks, wharves, lighterage systems, or loading or discharging terminal facilities in any port of the United States, or warehouses, equipment or terminal railways connected therewith, shall serve vessels and shippers, and to determine, prescribe, and enforce the rates, terms, and conditions charged or required for the furnishing of such services, including stevedoring and handling of cargo, and the handling, dispatching, and bunkering of vessels, and to make such rules

and regulations with respect to the conduct of any such business as may be necessary and proper. It shall be unlawful to charge, collect, or claim any compensation, or to enforce or attempt to enforce any terms or conditions, or to make or receive any payment or do any act with respect to any such service not in accordance with the rates, terms, and conditions so prescribed, anything in any contract, whether heretofore or hereafter made, to the contrary notwithstanding."

And whereas in section 2 of said Act it is provided—

"That the President may exercise the power and authority hereby vested in him through such agency or agencies as he shall determine from time to time."

Now, therefore, it is ordered as follows:

1. All power conferred on the President in section 6 of said act to determine, prescribe, and enforce reasonable freight rates and the terms and conditions of affreightment which shall govern the transportation of goods on private merchant vessels of the United States, shall be exercised through the United States Shipping Board.

2. All power conferred on the President in section 12 of said Act to determine, prescribe, and enforce the rates, terms, and conditions charged or required for services furnished by persons in possession of dry docks, wharves, lighterage systems, or loading or discharging terminal facilities, or warehouses, equipment, or terminal railways connected therewith, and for stevedoring or handling cargo, and the handling, dispatching, or bunkering of vessels, and all power conferred on the Presi-

dent to make rules and regulations with respect to the conduct of any such business, shall be exercised by the United States Shipping Board; but the power delegated in this paragraph shall not extend to any dry docks, wharves, lighterage systems, or loading or discharging terminal facilities, or warehouses, equipment or terminal railways, which are now or may hereafter be placed under the jurisdiction and control of the Secretary of War or the Secretary of the Navy or the Director General of Railroads.

3. Nothing contained in this Executive order shall be deemed to withdraw any power or authority heretofore granted to or now exercised by the Secretary of War, the Secretary of the Navy, the War Trade Board, the Interstate Commerce Commission, or the Director General of Railroads.

WOODROW WILSON.

THE WHITE HOUSE,
3 December, 1918.

APPENDIX VI

SUITS IN ADMIRALTY ACT, MARCH 9, 1920, C. 95, 41 STAT. 525 (U. S. C., TITLE 46, SECS. 741–752)

An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United

States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in per-

sonam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 3. That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States, the United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation, shall become void and be surrendered and canceled upon the filing of a sug-

gestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act.

SEC. 4. That if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act.

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises.

SEC. 6. That the United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

SEC. 7. That if any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the

indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, or of such corporation, for the allowance and payment of such judgments: *Provided, however,* That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case.

SEC. 8. That any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 4 and 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

SEC. 9. That the Secretary of any department of the Government of the United States, or the United States Shipping Board, or the board of trustees of such corporation, having control of the possession or operation of any merchant vessel are, and each

hereby is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act.

SEC. 10. That the United States, and the crew of any merchant vessel owned or operated by the United States, or such corporation, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, or of such corporation, having control of the possession or operation of such vessel.

SEC. 11. That all moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

SEC. 12. That the Attorney General shall report to the Congress at each session thereof the suits under this Act in which final judgment shall have been rendered for or against the United States and such aforesaid corporation, and the Secretary of

any department of the Government of the United States, and the United States Shipping Board, and the board of trustees of any such aforesaid corporation, shall likewise report the arbitration awards or settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

SEC. 13. That the provisions of all other Acts inconsistent herewith are hereby repealed.

Approved, March 9, 1920.

APPENDIX VII

MERCHANT MARINE ACT, 1920, JUNE 5, 1920, C. 250, 41 STAT. 988 (U. S. C., TITLE 46, SECS. 861–863, 871, 873, 886)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping

property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(c) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President,

shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided,* That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint resolution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels and property the use of which is in the opinion of the President required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided,* That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

* * * * *

SEC. 14. That the net proceeds derived by the board prior to July 1, 1921, from any activities authorized by this Act, or by the "Shipping Act, 1916," or by the Acts specified in section 2 of this Act, except such an amount as the board shall deem necessary to withhold as operating capital, for the purposes of section 12 hereof, and for the insurance fund authorized in section 10 hereof, and for the construction loan fund authorized in section 11 hereof, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, less such an amount as may be authorized annually by Congress to be withheld as operating capital, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treas-

ury of the United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by section 2 of this Act and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts.

* * * * *

SEC. 35. That the power and authority vested in the board by this Act, except as herein otherwise specifically provided, may be exercised directly by the board, or by it through the United States Shipping Board Emergency Fleet Corporation.

○

(9)

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

Nos. .....

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
ROSENBERG BROS. & COMPANY,
Respondent.
[redacted] 119

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
CALIFORNIA WINE ASSOCIATION,
Respondent.
[redacted] 120

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation,
Petitioner,
vs.
S. L. JONES & COMPANY, a corporation,
Respondent.
[redacted] 121

BRIEF ON BEHALF OF RESPONDENTS OPPOSING PETITION FOR WRITS OF CERTIORARI.

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In the Supreme Court
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Nos.....

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Petitioner,
vs.
S. L. JONES & COMPANY, a corporation,
Respondent.

BRIEF ON BEHALF OF RESPONDENTS OPPOSING PETITION FOR WRITS OF CERTIORARI.

In opposition to the petition for writs of certiorari herein, and in reply to the three grounds upon which the writs are sought, respondents respectfully show:

ANSWERS TO QUESTIONS PRESENTED.

I.

The shipments to Cardiff were covered by separate bills of lading naming San Francisco as port of shipment and Cardiff as port of destination. The shipments to Rotterdam were likewise covered by separate bills, and likewise named San Francisco and Rotterdam only. Hamburg was not mentioned in them. For almost two centuries courts of admiralty have held that deviation clauses similar to the clause involved in these cases give a vessel the right to call at such ports only as lie in the usual course of a voyage between the ports of shipment and destination named in the contracts. The literal right "to touch at any ports" etc., must be restricted to the course of the particular voyage described in the bills of lading, and does not give a right to carry cargo *beyond* the named terminus. Any other construction would be unreasonable as subversive of the rights of shippers and the interests of trade (*Leduc v. Ward*, 20 Q. B. D. 475, and cases cited *infra*, pp. 6, 7). *Literally* construed the deviation clause would allow a vessel to cruise the world over before coming to the destination contracted for. Hamburg lies *beyond* both Cardiff and Rotterdam: 750 miles in one case, 250 miles in the other.

The *London-Savannah* case, on which the petitioner relies, was decided on the ground of "an almost unvary-

ing practice" between the shipper and the steamship line, whereby the vessels of the latter proceeded first to a continental port before delivering cargo in England (255 Fed., page 309). Antwerp, to which deviation was to be made, was referred to in the bills of lading. Hamburg was not referred to in the bills of lading sued upon here (see 2 Fed. (2nd) 390 (392)). Petitioner tried to establish a similar practice in the instant cases, but both courts below found against it, and that finding we assume is accepted here.

The newspaper advertisements of "Hamburg, Rotterdam and Cardiff" did not apprise shippers that the vessel would call at those ports *in the order named.* Petitioner conceded this in its brief in the court below (*infra,* p. 11) on the testimony of its own witness in the trial court (R. p. 448). Newspaper advertisements form no part of the written contracts (*The Delaware,* 14 Wall. 579; *Leduc v. Ward,* 20 Q. B. D. 475).

II.

The Fleet Corporation is subject to suit as a private corporation (*Sloan Shipyards Corp. v. Fleet Corporation,* 258 U. S. 549). It has repeatedly been held that the Suits in Admiralty Act does not provide an exclusive remedy against the Fleet Corporation (*U. S. S. B. E. F. C. v. Banque Russo Asiatique London,* 286 Fed. 918 (C. C. A.) and cases cited *infra,* p. 13). The purpose of the Act was to relieve publicly owned vessels from judicial seizure (*Blamberg Brothers v. U. S.,* 260 U. S. 452). These suits were not *in rem* but *in personam* against the Fleet Cor-

poration as a private entity, and hence the Suits in Admiralty Act has no application.

Laches was not pleaded and therefore is not available as a defense (*Burnet v. Desmornes y Alvarez,* 226 U. S. 145). If 100 suits are pending where this question was raised and the question is of importance, it should have been pleaded here. As a matter of fact the point, apart altogether from pleading, is without merit (*infra,* p. 14).

The limitation period in the Suits in Admiralty Act will not be followed by analogy where suits are not "authorized" by the Act (*Prince Line, Ltd., v. U. S.,* 1926 A. M. C. 368 (Court of Claims); *The Bascobal,* 295 Fed. 299 (C. C. A.)). The Government did not ask for ceritorari in either of these cases, although the present contention was decided against it in both.

III.

The agency theory has been consistently repudiated. (*Sloan Shipyards v. U. S., supra; Providence Engineering Corp. v. Downey Shipbuilding Corp.,* 294 Fed. 641 (C. C. A. 2nd Cir. 1923), certiorari denied 68 L. Ed. 862; and cases cited *infra,* p. 16).

ARGUMENT.

These causes arise from private contracts by which petitioner, in time of peace, and as a common carrier of merchandise by sea, agreed to transport certain cargo belonging to respondents from San Francisco to Cardiff, Wales, and Rotterdam, Holland, on the steamship "West

Aleta". For the carriage of their goods respondents paid to petitioner, and the latter has retained, upwards of $165,000 in freight moneys.

The "West Aleta" sailed from San Francisco on January 6, 1920. She arrived off the coast of England on the 10th of February, and thereafter passed the entrance to the port of Cardiff, passed the entrance to the port of Rotterdam, and on February 12, 1920, stranded on Terschelling Island off the Dutch coast (R. 107, 112). She was wrecked in an endeavor to avoid entering the German mine fields, which at this time were still notoriously perilous in the North Sea and particularly near the mouth of the Elbe (R. 65, 123-166). The place where the vessel stranded lies 600 miles beyond Cardiff and 100 miles beyond Rotterdam. Her intended deviation—that is, to Hamburg and return—was about 1500 miles as to Cardiff and 500 miles as to Rotterdam.

Six federal judges have passed upon the questions involved in these cases. Judge Partridge decided the exceptions to libel adversely to petitioner (295 Fed. 372). Judge Augustus N. Hand decided adversely to petitioner on the merits in identical cases of other shippers on the same voyage of the "West Aleta" (2 Fed. (2nd) 390). Judge Kerrigan decided the instant cases on the merits adversely to petitioner (7 Fed. (2nd) 893). Circuit Judges Gilbert, Hunt and Rudkin affirmed that decision (12 Fed. (2nd) 721). For the convenience of the court we print the opinion on the merits and the affirming opinion of the Circuit Court of Appeals as an appendix to this brief.

I.

THE DEVIATION POINT.

The deviation clause is as quoted in the petition, but other clauses bearing on deviation and obviously material to the question at issue are to be found in the bills. One gave the vessel the right to go beyond the named destination and land the goods upon the vessel's return trip, in the event of certain contingencies which do not here exist. Another gave the right "to deviate for the purpose of saving life or property." Another, the right to deviate for trial trips. *These particular clauses would be superflous if the general deviation clause were to receive its* LITERAL *meaning.*

The rule has always been, however, that the general deviation clause must be construed with reference to the ports of shipment and destination specified in the bill of lading. As early as 1741 an English court so applied the rule (*Clason v. Simmons,* reported 101 Eng. Rep. 686). Since that time English and American courts have uniformly restricted the literal right conferred by the "liberty to call" clause to a liberty to touch at such ports only as lie on the usual course of a voyage between the ports of shipment and destination. Otherwise the vessel would be at liberty to engage in promiscuous cruising without any regard to the interests of cargo owners.

LEADING ENGLISH AUTHORITIES:

Leduc v. Ward, 20 Q. B. D. 475 (1888);

Margetson v. Glynn (1892), 1 Q. B. 337 (1893) A. C. 351;

James Morrison & Co., Ltd., v. Shaw, Savill & Albion, Ltd. (1916), 2 K. B. 783 affirming (1916) 1 K. B. 747;

Smith v. The King, 14 Asp. 53; 33 The Times L. R. 342 (1917);

U. S. Shipping Board v. Bunge & Born, Ltd., 40 The Times L. R. 541 (K. B. Div. 1924), affirmed 41 The Times L. R. 73 (Court of Appeal November 1924), affirmed 42 The Times L. R. 174 (House of Lords, December 1925).

Leading American Authorities:

Ardan SS. Co. v. Theband, 35 Fed. 620 (D. C. N. Y. 1888);

The Wells City, 57 Fed. 317 (D. C. N. Y. 1893); affirmed 61 Fed. 857 (C. C. A. 2nd Cir. 1894).

Hurlbut v. Turnure, 76 Fed. 587 (D. C. N. Y. 1896); affirmed 81 Fed. 208 (C. C. A. 2nd Cir. 1897).

The Maine (Italian Government Commission v. Green Star SS. Corporation), 8 Fed. (2nd) 291 (D. C. N. Y. 1924);

Smith v. U. S. S. B. E. F. C., 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

The use of clauses giving liberty to deviate *in particular circumstances* indicate that the general deviation clause must receive its conventional construction (see opinion of Lord Justice Bankes in *U. S. Shipping Board v. Bunge & Born, Ltd.,* 41 The Times L. R. 73 (74)).

The phrase "in or out of the customary route" must also be construed to refer to ports lying between those of

shipment and destination. This phrase is but one of many other unsuccessful devices to obtain a right at variance with the conventional meaning of the deviation clause. Of all such phrases the District Judge said:

> "It has been held that a carrier cannot escape its obligation by reserving liberty for its vessel to go 'to any port in the world' or 'to any ports or places whatever' (Gardner v. Senhouse, supra; Clason v. Simmonds, reported 6 T. R. 531, 101 Eng. Repr. 686; Ardan Steamship Co. v. Theband, supra), whether 'in any order' (Le Duc v. Ward, 20 Q. B. D. 475; The Wells City (D. C.) 57 F. 317, affirmed in (C. C. A. 2) 61 F. 857, 10 C. C. A. 123), or 'in any rotation' (Margetson v. Glynn, (1892) 1 Q. B. 337, (1893) A. C. 351), or whether there be added the phrase 'whether in geographical order or not' (White v. Grenada Steamship Company, 13 Times L. R. 1), or the words 'although in a direction contrary to, out of, or beyond the route to said port of discharge' (Austrian Steamship Company v. The Calafiore, 194 F. 377, 114 C. C. A. 295) or those here used, 'in or out of the customary route' (The Willdomino (C. C. A.) 300 F. 5; Smith v. United States Shipping Board Emergency Fleet Corporation, supra).
>
> "The rule to be deduced from these cases is that, in the absence of unambiguous language to the contrary, a deviation clause invariably must be construed to have reference to a particular voyage between the ports of departure and destination named in a policy or bill of lading, and to have no application to any port or ports not naturally and usually ports of call on the proposed voyage. Le Duc v. Ward, supra. Addition of the words 'in or out of the customary route' may broaden a carrier's right to deviate; but they will not be construed to authorize the initiation of a new voyage before an old one is completed. Austrian Steamship Company v. The Calafiore (C. C. A. 5) 194 F. 377, 114 C. C. A. 295. As was stated

> by Lord Justice Bankes in the English Court of Appeal less than a year ago, 'the decision always has been that the general language of which these cases are illustration must be read as controlled by the governing object of the contract, namely, the prosecution of the named voyage * * *' United States Shipping Board Emergency Fleet Corporation v. Bunge and Borne Ltd., 41 T. L. R. 73, affirming 40 Times L. R. 541 (K. B. D.)." (7 Fed. (2nd) 893 (895)).

The case of

> *South Atlantic SS. Line v. London-Savannah Naval Stores Co.*, 255 Fed. 306 (5th C. C. A. 1918),

is not in conflict with the decision in the cases at bar. That case was decided on the ground that it had been the almost unvarying practice of libelant's vessels to proceed first to continental ports before going to Bristol. Previous shipments between the parties had been carried in such manner. The shipper's manager testified that in the absence of certain communications which were relied upon by the shipper the vessel would have had the right, under the bills of lading, to proceed to a continental port before going to Bristol. The port of Antwerp, to which deviation was to be made, was referred to in the bills of lading. On these grounds the *London-Savannah* case was distinguished from cases kindred to those at bar by Judge Augustus N. Hand. See *Smith v. U. S. S. B. E. F. C.*, 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

Petitioner sought to bring the present cases within the rule of the *London-Savannah* case by endeavoring to prove a similar practice between these parties, but in this it failed. The District Court and the Circuit Court of Ap-

peals both found against the existence of any such practice. The vessels in petitioner's line normally proceeded to European ports in strict geographical order rather than reversing the order of ports (District Court, 7 Fed. (2nd), page 896; Circuit Court of Appeals, 12 Fed. (2nd), page 723).*

Newspaper advertisements form no part of the written contracts between the parties. Under the parole evidence rule even actual knowledge of a shipper at variance with the settled meaning of a bill of lading is incompetent.

The Delaware, 14 Wall. 579, 20 L. Ed. 779 (1871);
St. Johns N. F. Shipping Corp. v. S. A. Companhia Geral Commercial etc., 263 U. S. 119; 68 L. Ed. 201 (1923);
Leduc v. Ward, 20 Q. B. D. 475 (1888).

The advertisement of a ship for "Hamburg, Rotterdam and Cardiff" does not mean that she is to call at these ports in the order named. Petitioner's witness so testified in the court below (R. 448) and petitioner conceded the point in its brief in the Circuit Court of Appeals, from which we quote as follows:

---

*Petitioner also cites *The Blandon*, 287 Fed. 722, and *The Sidonian*, 34 Fed. 805, 35 Fed. 534. In *The Blandon* the vessel was bound from New York to Valencia, Spain. She first proceeded to Philadelphia, then returned to New York and finally sailed directly from New York for Valencia. The court held that, while the call at Philadelphia was justified, the return to New York constituted a deviation not permitted by the deviation clause and the vessel was held liable.

In the present case the "West Aleta" passed Cardiff and Rotterdam, intending to call at Hamburg and then to return to the ports which had already been passed. Under the ruling in *The Blandon* this was a clear deviation.

In *The Sidonian* a vessel bound from Genoa to New York called at Palermo and it was held no deviation. The court found that Palermo was ordinarily touched at by vessels of the steamship line. It is not greatly out of the straight course between Genoa and New York.

> "No point is made by respondent that the advertisement permitted the vessel to go to the ports of Hamburg, Rotterdam and Cardiff in that order." (Appellant's brief, page 10.)

It is suggested that, because respondents had Hamburg cargo aboard the "West Aleta," they might have expected the German port to be the first port of call. This suggestion not only does violence to the separate bills of lading covering shipments to the several ports, but is unreasonable for it is inconceivable that the shipper would expect his Cardiff cargo to be carried 750 miles past that port, through the German mine fields, and back again, in order that certain other cargo might first be delivered at the most remote port. The same comment applies to Rotterdam shippers. Although one libelant had substantial cargo for both Rotterdam and Hamburg, the aggregate Hamburg cargo of the other two libelants consisted of five barrels of wine and one package of samples. The suggestion that these trivial shipments should take precedence over Cardiff and Rotterdam cargoes valued at several hundred thousand dollars is not persuasive.

II.

THE "SUITS IN ADMIRALTY ACT" POINT—LACHES—INTEREST.

Objection is made that the Suits in Admiralty Act applies to these cases and that they are barred by the limitation period prescribed by Section 5 thereof. If the Act were applicable at all, its effect would cut deeper than mere limitations, because the "West Aleta", having been

wrecked and destroyed in Europe, was no longer "employed as a merchant vessel" nor was she in "the United States or its possessions" at the time the libels were filed. The Act affords no remedy in such cases. See Sections 1 and 2, Suits in Admiralty Act, and

Blamberg Brothers v. United States, 260 U. S. 452; 67 L. Ed. 346;

James Shewan v. United States, 266 U. S. 108; 45 Sup. Ct. 45; 69 L. Ed. 192;

Nahmeh v. United States, 267 U. S. 122, 45 Sup. Ct. 277; 69 L. Ed. 536;

Rosenberg Bros. & Co. v. U. S. S. B. E. F. C., 295 Fed. 372 (instant cases on exceptions to libels).

This indeed was petitioner's own position on exceptions to the libels (R. pp. 17, 23, 41, 724-25, 789) under the misapprehension apparently that this litigation *had* been brought under the Suits in Admiralty Act. For obvious reasons *it had not*, but rather against the Emergency Fleet Corporation as a private corporation, in which capacity it is amenable to suit at such places as it transacts business.

Sloan Shipyards Corp. v. U. S. S. B. E. F. C., 258 U. S. 549; 66 L. Ed. 762; 42 Sup. Ct. 386 (1922).

Now petitioner changes front and in order to invoke the limitations of the Suits in Admiralty Act contends that this litigation must be under it. Its own first position that it cannot be was correct.

The purpose of the Suits in Admiralty Act was to relieve publicly owned vessels from judicial seizure (*Blam-*

berg Brothers v. United States, James Shewan v. United States, Nahmeh v. United States, all *supra*) and it does not provide an *exclusive* remedy against the Emergency Fleet corporation.

U. S. S. B. E. F. C. v. Banque Russo Asiatique London, 286 Fed. 918 (C. C. A. 3rd Cir. 1923), affirming 266 Fed. 897 (D. C. Pa. 1920);

John G. Wright & Co. v. U. S. S. B. E. F. C., 285 Fed. 647 (D. C. N. Y. 1922);

Wallace v. U. S. S. B. E. F. C., 5 Fed. (2nd) 234 (D. C. Wash. 1925);

Stewart v. U. S. S. B. E. F. C., 7 Fed. (2nd) 676 (D. C. N. Y. 1925);

Smith v. U. S. S. B. E. F. C., 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

Laches.

Petitioner asks the court to apply the bar of laches, but this defense was not pleaded and therefore is not available.

Burnet v. Desmornes y Alvarez, 226 U. S. 145; 33 Sup. Ct. 63; 57 L. Ed. 159;

Gormley v. Bunyan, 138 U. S. 623; 11 Sup. Ct. 453; 34 L. Ed. 1086;

Shields v. Shiff, 124 U. S. 351; 8 Sup. Ct. 510; 31 L. Ed. 445.

It is said that 100 suits are pending wherein a similar question has been raised, but if the point is of such importance, it is extraordinary that it was not pleaded here. Even if otherwise worthy of determination, it can-

not be passed upon on the present record. But the point has no merit anyway. It has always been the rule that where no statute of limitations has specific application, a court of admiralty will pass upon *laches* as a matter of discretion considering prejudice to the respondent and the analogy of state statutes of limitations as vital elements in its determination.

Benedict on Admiralty, 5th ed., Secs. 470, 471.

Petitioner made no showing of prejudice; did not even try to do so. The period of limitation for suits on written contracts is four years in California (C. C. P. Sec. 337) and these suits were brought well within that period.

The cases cited by petitioner do not warrant any departure from the settled rule. The statutes invoked in the cases cited applied *ex propria vigore* and not by analogy.* Section 5 of the Suits in Admiralty Act has no such application. By its terms it applies only to "suits as herein authorized," and it has been seen that the present cases were not of the class authorized by the Act.

This precise question, both under Section 5 and also under the General Salvage Act, was decided against the Government by the Court of Claims in February, 1926.

Prince Line, Ltd., v. United States, 1926 A. M. C. 368.

**Christie-Street Commission Co. v. U. S.*, 136 Fed. 326 was a suit to recover internal taxes illegally collected. The court invoked R. S. 3227, which had specific application to such cases. *Ford Pitt Gas Co. v. U. S.*, 49 C. Cls. 224, presented the same issue and the same statute of specific application was invoked. *Engel v. Davenport*, 70 L. Ed. (Adv. Op.) 424; 46 Sup. Ct. (Adv. Op.) 410 (1926) applied the two year statute found in the Employer's Liability Act, which was specifically incorporated into the Merchant Marine Act of 1920.

Certiorari was not there sought, and the judgment has been paid.

The Circuit Court of Appeals for the 3rd Circuit ruled against the same argument in

The Bascobal, 295 Fed. 299 (1923);

Certiorari was not applied for.

Interest.

Interest at the legal rate was properly allowed.

Standard Oil Co. v. United States, 267 U. S. 76; 45 Sup. Ct. 211; 69 L. Ed. 519 (1925);

Luckenbach v. The Thekla, 266 U. S. 328; 45 Sup. Ct. 112; 69 L. Ed. 313 (1924);

U. S. S. B. E. F. C. v. Texas Star Flour Mills 12 Fed. (2nd) 9, (C. C. A. 5th Cir. 1926).

III.

THE AGENCY POINT.

The "agency" defense is that the Fleet Corporation made these contracts for and on behalf of the United States, and hence that the former may escape liability.

This point was neither pleaded nor presented to the trial court. It was first suggested in the Circuit Court of Appeals. There it was properly rejected, as it had already been decided adversely to petitioner by *this* court.

The contracts were made by the Fleet Corporation as principal, and not as agent, which appears from the following bold faced text in each bill of lading:

"Shippers are requested to carefully read this bill of lading which constitutes the contract between the shipper or agent of the owner of the property carried and the United States Shipping Board Emergency Fleet Corporation."

This defense of "agency" has, as we read the authorities, been consistently repudiated.

Sloan Shipyards Corp. v. U. S. S. B. E. F. C., 258 U. S. 549; 42 Sup. Ct. 386; 66 L. Ed. 762 (1922);

Providence Engineering Corp. v. Downey Shipbuilding Corp., 294 Fed. 641 (C. C. A. 2nd Cir. 1923); certiorari denied 68 L. Ed. 862;

U. S. S. B. E. F. C. v. Texas Star Flour Mills, 12 F. (2nd) 9 (C. C. A. 5th, 1926);

Florida Grain & Elevator Co. v. U. S. S. B. E. F. C., 3 F. (2nd) 314 (D. C. Fla. 1924);

U. S. S. B. E. F. C. v. O'Shea, 5 F. (2nd) 123 (Dist. Col. 1925);

Smith v. U. S. S. B. E. F. C., 2 Fed. (2nd) 390 (D. C. N. Y. 1924).

The attempted distinction between contracts of ship construction and contracts of ship operation is suggested here for the first time and is, we think, plainly immaterial. In carrying goods for hire in time of peace the Fleet Corporation was, if anything, engaging more clearly in business, as against strictly governmental activity, than in constructing ships in world war times.

CONCLUSION.

None of the considerations outlined in the rules of this court (Rule 35, Section 5 (b)) as gound for review on writs of certiorari seem to us to be here presented. The decision of the Circuit Court of Appeals is not only not in conflict with other decisions, but is based upon and in accord with a line of decision which has existed in courts of admiralty for almost two centuries. The questions as to the status of the petitioner, its liability on contracts, *laches* and interest, have repeatedly been adjudicated and petitioner is bound by such prior decisions.

It is respectfully submitted that the petition for writs of certiorari should be denied.

Respectfully submitted,

J. M. MANNON, JR.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Attorneys for Respondents.

Dated: San Francisco,
September 24, 1926.

ENTRY OF APPEARANCE

The undersigned hereby enter their appearance in the above entitled cases as counsel for respondents.

J. M. MANNON, JR.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Attorneys for Respondents.

ADMISSION OF SERVICE

Due service and receipt of a copy of the within brief is hereby admitted this.....day of....., 1926.

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Attorneys for Petitioner.

Appendix.

Appendix I.

ROSENBERG BROS. & CO. v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION. CALIFORNIA WINE ASS'N v. SAME. S. L. JONES & CO. v. SAME.

(District Court, N. D. California, S. D. September 23, 1925.)

KERRIGAN, District Judge. These three cases, tried together, are suits brought in the names of the shippers and owners of cargo lost on the steamship West Aleta, when that vessel stranded on Terschelling Island, more than five years ago.

The West Aleta left San Francisco with a full cargo on January 6, 1920. Libelants' shipments were destined for Cardiff, Wales, and Rotterdam, Holland, and consisted of rice, nutmegs, and 15,000 barrels of wine and brandy. Bills of lading were issued in the usual form, in one case naming San Francisco as the port of departure and Cardiff as that of destination, and in the other cases San Francisco and Rotterdam as such respective ports. In none of them was any reference made to Hamburg, Germany; but, inasmuch as each of the libelants had consigned a shipment to that port, they had actual knowledge that the vessel intended to call there.

In each case the opening clause of the bill of lading reads as follows: "Received in apparent good order and condition * * * at San Francisco * * * to be transported by the ship West Aleta, * * * *with leave* * * * *to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports*

more than once unto the port of Cardiff (Rotterdam). * * *"

Stamped on the face of the instrument is a clause reserving liberty to deviate for trial trips, and in its main body a clause has been inserted to permit deviations "for the purpose of saving life or property." No other provision is made for deviation from the direct route between San Francisco and the destination named, which in each case, as stated, was Rotterdam or Cardiff.

For reasons of her own, not amounting to necessity, after proceeding safely through the Panama Canal, and across the Caribbean Sea and the Atlantic Ocean to the entrance to Bristol Channel, on which Cardiff is situated, the West Aleta proceeded through the Straits of Dover into the North Sea. After passing the entrance to Rotterdam Harbor, when about 100 miles beyond that point, she stranded on Terschelling Island, and with her cargo became a total loss. Admittedly, she was on her way to Hamburg, a port 750 miles beyond Cardiff and 250 miles beyond Rotterdam, intending to visit those three ports in the reverse of their geographical order.

At the time of the wreck the North Sea at the mouth of the Elbe was still dangerous for navigation, because of the presence of floating mines. The captain of the West Aleta appears to have lost his vessel in an endeavor to avoid areas containing such mines, and to have been guilty of faulty navigation in doing so. For this, of course, no claim can be made; but for his failure to discharge the Cardiff and Rotterdam cargoes before passing those ports libelants seek to recover their values,

relying on the familiar doctrine of deviation to create an absolute liability in their favor.

It is clear that such a liability must be established if a recovery is to be allowed, for the real parties in interest herein are cargo insurers, who have made full payment of losses under their policies, and now stand subrogated to the claims of the insured. Each of the bills of lading contains a "benefit of insurance" clause in favor of respondent. Before, however, it can avail itself of this defense it has cast upon it the burden of explaining the deviation above described from the natural, direct, and ordinary route.

Respondent's first contention is that under the "liberty to call" or "deviation" clause above set forth, the West Aleta had a right to make the voyage which she was pursuing at the time of her loss. While it is true that the right of deviation given by this clause is very broad, it nevertheless is not unlimited. The law has, in fact, attached to it a fixed and certain meaning, older than the oldest American court of admiralty, which limits its application to ports substantially on the course of the voyage described, *between its termini and before the port of destination.*

Regarding the rule as settled by earlier cases, more than a century ago Lord Mansfield held a general leave "to touch and stay at any ports and places whatsoever, without being deemed a deviation," must be confined to ports "in the course of the voyage" to the destination named in a policy of insurance. "Though at the trial I was struck with the largeness of these words," said that eminent

judge, "as giving liberty to the ship to go any where she pleases, to any island, in any course, it must be confined to the voyage insured; that is, to some port in the course of the voyage to (the ports of destination); *otherwise, I do not see where the voyage is to end.* They might make it last two years, * * * and the larger the words are the more necessary is this construction, else the ship might trade and barter without any termination." Gardner v. Senhouse, 3 Taunt. 16, 128 Eng. Repr. 7. (Italics mine.)

I have been referred to no case in this country which impairs the force of this reasoning. It was accepted in Smith v. United States Shipping Board Emergency Fleet Corporation (D. C.) 2 F. (2d) 390, and appears to me to be supported by an almost unbroken line of American decisions. Ardan S. S. Co. v. Theband (D. C.) 35 F. 620; Hurlbut v. Turnure (D. C.) 76 F. 587, affirmed in (C. C. A. 2) 81 F. 208, 26 C. C. A. 335; Swift & Co. v. Furness, Withy & Co. (D. C.) 87 F. 345; The Blandon (D. C.) 287 F. 722; The Willdomino (C. C. A.) 300 F. 5.

In Austrian Union S. S. Co. v. Calafiore (C. C. A. 5) 194 F. 377, 114 C. C. A. 295, a vessel on a voyage from Palermo, Italy, to New Orleans, stopped en route at Tampa, Fla., to take on cargo for the return voyage. As a result of the delay libelant's cargo of lemons was damaged. A clause in the bill of lading gave the carrier "liberty * * * to proceed to and stay at any ports or places whatsoever (although in a direction contrary to, or out of, or beyond, the route to said port of discharge), once or oftener, in any order, backwards or forwards, for the purpose of receiving and for delivering coals, cargo, or pas-

sengers, *or for any other purpose;* and all such ports * * * shall be deemed within the intended voyage." A broader right of deviation can scarcely be conceived; yet it was held, and I think rightly, that the ship had not stopped at Tampa for the purposes of the voyage, but for those of *another* voyage, to be undertaken after New Orleans was reached, that such action was unquestionably beyond the contemplation of the shippers at the time the bill of lading was signed, and that the carrier therefore was liable, although, as it will be observed, Tampa was on the course of the voyage named in the bill of lading. This is perhaps the extreme example of Lord Mansfield's rule of construction that "the larger the words are the more necessary" does strict construction become. Gardner v. Senhouse, supra.

In the present case respondent's testimony indicates that the principal reason why the West Aleta was ordered to take the course which she followed was convenience of the vessel in loading her return cargo.

Smith v. United States Shipping Board Emergency Fleet Corporation, supra, is very much in point here, because it involved claims for the loss of other cargo on the same ship and voyage which gave rise to these suits. The only distinction to be made is that there all of the cargo was shipped to Rotterdam; whereas, in the cases at bar, the greater part of it (in point of value) was destined for Cardiff, and the deviation attempted was greater by 1,000 miles than in that case. Judge Augustus Hand concluded there that "the permission 'to touch at any port or ports in any rotation or order, in or out of the customary route',

related to stopping in ports on the way to Rotterdam, either in or out of the geographical order."

This, counsel argue, absolutely disregards the phrase "out of the customary route," because without the use of these words a ship might touch at any such port, and such a construction deprives them of all meaning. That the words quoted may be redundant to the power which they purport to enlarge, without in fact enlarging it, must of course be granted. The books are full of cases in which language has fallen short of the meaning which it was intended to express. Certainly the entire clause must be construed with the utmost strictness against the carrier (Poor on Charter Parties and Ocean Bills of Lading, §69; The Caledonia, 157 U. S. 124, 137, 15 S. Ct. 537, 39 L. Ed. 644; Pacific Coast Steamship Co. v. Bancroft-Whitney Co. [C. C. A. 9] 94 F. 180, 187, 36 C. C. A. 135), and its meaning may not be extended further than its terms can reach.

Baldly stated, it gives permission "to touch at any port or ports * * * in or out of the customary route * * * unto the port of Cardiff (Rotterdam). * * *" The phraseology is not "unto, beyond, and back to the port of Cardiff," but simply "unto the port of Cardiff." To have held that there was no deviation from the agreed voyage, it would have been necessary for Judge Hand to adopt an unduly liberal, not to say strained, construction of this language.

The general attitude, both of the English and American courts, toward exemptions such as the one herein, may be seen from a résumé of the decisions. It has been held that a carrier cannot escape its obligation by reserving liberty for its vessel to go "to any port in the world," or "to

any ports or places whatever" (Gardner v. Senhouse, supra; Clason v. Simmonds, reported 6 T. R. 531, 101 Eng. Repr. 686; Ardan Steamship Co. v. Theband, supra), whether "in any order" (Le Duc v. Ward, 20 Q. B. D. 475; The Wells City [D. C.] 57 F. 317, affirmed in [C. C. A. 2] 61 F. 857, 10 C. C. A. 123), or "in any rotation" (Margetson v. Glynn, [1892] 1 Q. B. 337, [1893] A. C. 351), or whether there be added the phrase "whether in geographical order or not" (White v. Grenada Steamship Company, 13 Times L. R. 1), or the words "although in a direction contrary to, out of, or beyond the route to said port of discharge" (Austrian Steamship Company v. The Calafiore, 194 F. 377, 114 C. C. A. 295) or those here used, "in or out of the customary route" (The Willdomino [C. C. A.] 300 F. 5; Smith v. United States Shipping Board Emergency Fleet Corporation, supra).

The rule to be deduced from these cases is that, in the absence of unambiguous language to the contrary, a deviation clause invariably must be construed to have reference to a particular voyage between the ports of departure and destination named in a policy or a bill of lading, and to have no application to any port or ports not naturally and usually ports of call on the proposed voyage. Le Duc v. Ward, supra. Addition of the words "in or out of the customary route" may broaden a carrier's right to deviate; but they will not be construed to authorize the initiation of a new voyage before an old one is completed. Austrian Steamship Company v. The Calafiore (C. C. A. 5) 194 F. 377, 114 C. C. A. 295. As was stated by Lord Justice Bankes in the English Court of Appeal less than a

year ago, "the decision always has been that the general language of which these cases are illustration must be read as controlled by the governing object of the contract, namely, the prosecution of the named voyage. * * *" United States Shipping Board Emergency Fleet Corporation v. Bunge and Borne, Ltd., 41 T. L. R. 73, affirming 40 Times L. R. 541 (K. B. D.).

The only question presented, therefore, is one of fact: Whether Hamburg is a port which lies substantially on the course of a voyage from San Francisco to Cardiff or Rotterdam; and this question it is impossible to answer in the affirmative.

The next point made by respondent is that there is a well-known and fully recognized custom of the port of San Francisco for vessels engaged in the so-called European Pacific service, with ports of discharge in the Hamburg-Bordeaux range, to call at those ports (including Hamburg, Rotterdam, and Cardiff) in any order, without regard to their particular geographical location. In passing on this contention, Judge Hand said as follows: "I cannot say that the business usage, whereby no more than 18 ships, at most, of the respondent had usually proceeded from the Pacific Coast to Hamburg before discharging at Rotterdam, and had only done this for a period of about a year, can be regarded as a general and uniform custom having the force of law, of which shippers should take notice." Smith v. United States Shipping Board Emergency Fleet Corporation (D. C.) 2 F. (2d) 390, 391.

It is elementary that a custom or usage, to be binding, must be definite, uniform, and well known. Furthermore,

it must be established by clear and satisfactory evidence, so that it may be justly presumed that the parties had reference to it in making their contract. Bowling v. Harrison, 47 U. S. (6 How.) 248, 12 L. Ed. 425; The Gualala (C. C. A. 9) 178 F. 402, 102 C. C. A. 548. It must, in addition, be shown to be long-established, reasonable, and generally acquiesced in (Sweet v. Leach, 6 Ill. App. 212); requirements which are sustained by all of the authorities (3 Jones on Evidence, §462). If the proof leaves it uncertain, either as to the fact or as to its effect on the matter with which it is related, it is void. United States Shipping Board Emergency Fleet Corporation v. Levensaler, 290 F. 297, 53 App. D. C. 322.

Proof was made at the trial that the European Pacific Line did not commence operations until 1919. During the World War there had been no such service at all. A list of sailings, which was produced by respondent, shows that there were not 18 vessels engaged in it, as the court was led to believe in the West Aleta case, but only 12. The Effingham, which left San Francisco on December 17, 1919, went to Hamburg before calling at London and Liverpool, but at the time the West Aleta sailed had not yet crossed the Atlantic. The Orani, which sailed on October 29, 1919, also departed from the geographical order of call, but touched only at ports in the United Kingdom. The Cockaponset commenced its voyage only 9 days before the departure of the West Aleta. Of the 9 other vessels listed, 3 had but one port of destination, and 6 called at several ports, strictly in their natural geographical order.

On such evidence as this, it is impossible to base a finding that there was a practice for vessels in the European Pacific trade to call at European continental ports out of their geographical order. Its tendency, if it has one, is to prove an opposite practice. The burden was on respondent to establish by clear and satisfactory evidence a custom at and prior to the time at which arrangements were made with respect to the West Aleta's cargo, and evidence of the practice subsequent to that time is clearly incompetent. No usage, as distinguished from a custom, has been shown; for to be legally recognized a usage must be proved to have been assented to by the parties, and to have been so notorious as to be presumed to have been assented to by them. 2 Williston on Contracts, 1276. The alleged custom invoked by respondent, therefore, has not been established by the evidence.

Nor is the point well taken that libelants knew of the intention of the operators of the West Aleta to send her to Hamburg before having her proceed to Rotterdam and Cardiff. If there is any rule of law which is settled beyond contradiction, it is the rule that parol evidence is inadmissible to vary the terms of a written contract. Except where some custom or usage exists, so well-established and generally known that it must be taken to be incorporated with the contract, and at the same time not inconsistent with its clearly expressed terms, such evidence must be disregarded. Le Duc v. Ward, supra; The Delaware, 81 U. S. (14 Wall.) 579, 20 L. Ed. 779; 3 Jones on Evidence §459. Objection of the strongest nature has been made to the admission of the evidence of custom just

referred to, because the deviation clause is plain and unambiguous, with a clear and settled meaning, and cases have been cited which seem conclusive of its inadmissibility. Grace v. American Central Insurance Company, 109 U. S. 278, 3 S. Ct. 207, 27 L. Ed. 932; Portland Flouring Mills Company v. British & Foreign Marine Insurance Co. (C. C. A. 9) 130 F. 860, 65 C. C. A. 344, certiorari denied, 195 U. S. 629, 25 S. Ct. 787, 49 L. Ed. 352.

Apart from this question, however, we have seen that it was entirely insufficient to establish the alleged custom. The proof offered by the respondent, of other facts and circumstances extraneous to the bill of lading, must therefore be disregarded under the rule of evidence adverted to. In other words, all evidence tending to show that libelants had actual knowledge of the proposed itinerary, all evidence of the contents of the newspaper advertisements published before the vessel sailed, in brief, everything tending to indicate that libelants knew or ought to have known of the course (inconsistent with these bills of lading) which was intended to be taken, must be excluded from consideration. St. Johns, N. F., Shipping Corporation v. S. A. Companhia Geral Commercial Do Rio de Janeiro, 263 U. S. 119, 44 S. Ct. 30, 68 L. Ed. 201; The Delaware, 81 U. S. (14 Wall.) 579, 20 L. Ed. 779.

My attention has been called to Judge Partridge's decision in the case of W. R. Grace & Co. v. Toyo Kisen Kabushiki Kaisha, 7 F. (2d) 889, decided as lately as September 15, 1925, and both parties insist that it is decisive here. While it is true that certain language there employed is favorable to respondent's contentions, I think

the reasoning of the opinion distinctly favors the libelants. That case had to do with a shipment of nitrates from Iquique and Antofagasta, Chile, to Honolulu. The vessel, instead of taking the direct route, proceeded northward, stopping at various ports, to San Francisco, and thence to Portland, Or., where she completed cargo. Immediately after leaving that port, she was destroyed by fire, and all her cargo was lost. It was not claimed that she should have taken the direct route. On the contrary, libelant's claim was that the "usual and customary" route was northerly to San Francisco, and *thence* directly to Honolulu. Liability as for a deviation was asserted, in spite of a clause of the bill of lading which gave the carrier "liberty to touch at any port or ports * * * in or out of the customary route," because of the inclusion of Portland in the vessel's itinerary. Judge Partridge held that there was no such liability, and I may say that I think his decision absolutely correct.

After citing numerous cases, including that of The West Aleta, in which the doctrine of Glynn v. Margetson, supra, has been followed, he stated that the real intent of the contract between shipper and carrier, with which all deviations must be consistent if they are to be excused by a "liberty to call" clause, is the main commercial purpose of that contract, and that accordingly the propriety of any particular deviation is a question of fact in each case, with no fixed rule for its determination. With this there can be no quarrel. Where, as in the case then at bar, there is a well-established custom, of which the shipper has knowledge, for vessels bound for a given destination to proceed

upon an indirect route, under the terms of even the narrowest "liberty to call" clause, there would be no liability for doing so, and whether or not a further deviation from that route would be justified by a clause including ports "in or out of the customary route" is another question, which was not decided by Judge Partridge, because at the time of shipment in the case before him, as was known both to libelants and the general public, the customary route had been changed, so as to include the port in question.

Parol evidence is, as he stated, admissible to show what the usual route is, in interpreting the deviation clause, no matter how great its latitude. But it never is admissible to prove knowledge on the part of, or a parol understanding with, a shipper that *the particular vessel* will deviate from the route between its ports of departure and destination, for this in effect would be to permit a contradiction of the implied provision of every bill of lading that no deviation inconsistent with its general commercial purpose will be undertaken. Le Duc v. Ward, supra. In W. R. Grace & Co. v. Toyo Kisen Kabushiki Kaisha, supra, it was not a contradiction of the contract of carriage to permit evidence to be given that four of the respondent's vessels, with the advertised intention of changing the customary route, prior to libelant's shipment, had returned via Portland. The fact that libelant had personal knowledge of the intention of the vessel on which his goods were to be carried to pursue that route was not essential to the result of the case, and must be regarded as purely accidental, except in so far as it goes to show a general

knowledge of the change in custom. It may be added that, if the mere receipt of notice of an intention to deviate, in a manner inconsistent with the terms of a bill of lading, is sufficient to permit a carrier to do so with impunity, the protection of a written instrument is very slight indeed.

Such being the case, it is apparent under the evidence that in proceeding toward Hamburg the West Aleta was guilty of a deviation which made her owner liable as an insurer for the safety of the cargo. At this point, however, the contention is made by respondent that it is entitled to the full benefit of the insurance paid to libelants for their losses. The rule is well established that a deviation changes the character of a voyage so essentially that a shipowner who has deviated cannot claim the benefit of the terms of a bill of lading. An unjustifiable deviation vitiates or avoids the contract of carriage, and the failure to comply with what in effect is a condition or warranty not to deviate displaces it. The Sarnia (C. C. A.) 278 F. 459, 463; Thorley v. Orchis Steamship Company, [1907] 1 K. B. 660. In such circumstances, the carrier cannot escape liability by reason of the relieving clauses which have been inserted in the bill of lading for its benefit. St. Johns, N. F., Shipping Corporation v. S. A. Companhia. Geral Do Rio de Janeiro, supra; Pacific Coast Co. v. Yukon Independent Transportation Co. (C. C. A. 9) 155 F. 29, 83 C. C. A. 625; Carver on Carriage of Goods by Sea, §287. Since it is not a condition precedent to suit for loss, after a deviation, that the cargo owner shall have been deprived of his right against the insurer (The Citta di Messina, 169 F. 472, 475; [D. C.] Smith v. United

States Shipping Board Emergency Fleet Corporation, supra), this contention of respondent also must fail.

It is further argued that the United States Shipping Board Emergency Fleet Corporation is only suable as a corporation under the Suits in Admiralty Act of 1920 (Comp. St. Ann. Supp. 1923, §§1251¼-1251¼*l*), under the provisions of which all rights of action are barred. On exceptions to the libels in these cases, Judge Partridge held that the suits were not barred or affected by the provisions of that act (Rosenberg Bros. & Co. v. United States Shipping Board Emergency Fleet Corporation (D. C.) 295 F. 372), and such was Judge Hand's opinion in The West Aleta, supra. I think the question requires no further discussion.

The final contention, that laches are imputable to libelants, is without merit, for the reason that these suits were brought well within the four-year period of limitations prescribed by the California statute. A court of admiralty sitting in this state will by analogy follow its statutes of limitations (Pacific Coast Steamship Co. v. Bancroft-Whitney Co., supra), and according to those there have been no laches here.

As the measure of damages for failure to deliver cargo is the market value of the goods at the port of destination at the time the vessel should have arrived (36 Cyc. 275; St. Johns, N. F., Shipping Corporation v. S. A. Companhia Geral Do Rio de Janeiro, supra; Carver on Carriage of Goods by Sea [6th Ed.] §727), libelants are entitled to recover the values set forth in the agreed statements of fact. It is therefore ordered that decrees issue in favor

of libelant California Wine Association for the sum of $642,871, interest, and costs; in favor of libelant Rosenberg Bros. & Co. for the sum of $20,782.79, interest, and costs; and in favor of libelant S. L. Jones & Co. for the sum of $4,481.66, interest, and costs.

Appendix II.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION v. ROSENBERG BROS. & CO. SAME v. CALIFORNIA WINE ASS'N. SAME v. S. L. JONES & CO.

(Circuit Court of Appeals, Ninth Circuit. May 10, 1926. Rehearing Denied June 14, 1926.)

Before GILBERT, HUNT and RUDKIN, Circuit Judges.

HUNT, Circuit Judge. These are appeals in admiralty from decrees against the Shipping Board Emergency Fleet Corporation in three cases, consolidated, instituted by the shippers and owners of cargoes lost on the steamship West Aleta of the European Pacific line, operated by the respondents under contract by Williams, Dimond & Co., from ports on the Pacific Coast to ports in the United Kingdom and the continent of Europe. The suits were carried on as between the cargo insurers, who paid the losses in full, and the operators of the ship, who were fully covered by insurance against any damages that might have to be paid for deviation.

Libelants claimed for failure to deliver, caused by deviation from the voyage. Respondents answered that the loss was occasioned by stranding, error in navigation, peril of the sea, and that, under the terms of the contract of carriage and the Harter Act (27 St. 445; Comp. St. §§8029-8035), they were not liable.

The goods were shipped in 1920 at San Francisco under separate bills of lading, some naming Cardiff, Wales, some naming Rotterdam, Holland, as the ports of destination. Taking the bill of lading in one of the cases as an exem-

plar, it sets forth receipt of the merchandise to be transported by the West Aleta to be carried on said vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, "with leave * * * to touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff, and there deliver in like apparent good order and condition at the vessel's tackles under order," etc. On the face of the bill of lading there was the following clause: "The vessel shall have liberty to deviate for the purpose of making trial trips and shall pay any reasonable increased cost of cargo insurance, if any, incurred in consequence thereof." After a description of the goods there is the following clause: "It is mutually agreed that the ship shall have liberty * * * to deviate for the purpose of saving life or property." And in the conditions included on the reverse side of the bill of lading this clause: "Also, that if on account of weather, * * * war, or other disturbances * * * or any causes beyond the control of the carrier, it should be considered impracticable or unsafe in the opinion of the master to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip. * * * "

The ship left San Francisco in January, 1920, and on February 10th sighted Bishop Rocks, a part of the Scilly Islands which mark the entrance to Bristol Channel. She did not proceed directly to Cardiff, but, passing the en-

trance to the port, proceeded easterly through the Straits of Dover, and on February 11th was abreast of the Hook of Holland at the entrance to the port of Rotterdam. The ship did not go to Rotterdam, but took a course for Hamburg, Germany. The master, apprehensive because of mines planted in the North Sea during the World War, changed his course on February 11th, and on the 12th, believing he was safely out of the mine fields, headed east for what he took to be Nordeney light ship. Immediately after the last change of course the ship struck a sand ridge which extended from the westerly end of Terschelling Island, and soon broke in two.

For more than a month prior to the sailing of the ship the European Pacific line advertised the West Aleta for "Hamburg, Rotterdam, and Cardiff" in the Guide, a shipping paper of San Francisco. One insurance policy was issued to the California Wine Association, covering wine to Cardiff and wine and liquor to Rotterdam on the West Aleta, "* * * via Panama Canal to Rotterdam and Cardiff." The policy had a clause, "held covered at a premium to be arranged in case of deviation or change of voyage, or of any omission or error in the description of the interest, vessel, or voyage."

Using the Cardiff receipt and bill of lading as comprehending the several cases, we have an original contract on a voyage from San Francisco, port of shipment, to Cardiff, port of destination, with leave to the ship to touch at any ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once.

An interpretation of the contract solely by legal import and construction of the words used, is that the voyage was to Cardiff, with the privilege of going to other ports in or out of order between the termini, in prosecuting the real objects of the adventure intended by the parties. We cannot regard the language of the liberty to call clause, permitting the ship to call at any ports in any order in or out of the customary route, as extensive enough to embrace in the voyage to Cardiff permission to go 750 miles beyond Cardiff and to call at Hamburg and then return to Cardiff. Gawdner v. Senhouse, 128 En. R. 7. Established rules of construction of policies are that the right of liberty to call is to be availed of as subordinate to the principle that the port or ports which the assured may visit shall be only those which are properly in the course of the voyage described, and in pursuance of the general purposes of the adventure embraced within the termini named in the policies. Glynn v. Margetson, 1 Q. B. 337; Id., [1893] L. R. 351. The Supreme Court of Massachusetts in Seccomb et al. v. Provincial Insurance Co., 10 Allen (92 Mass.) 305, said: "The only safe rule of construction is that which confines the meaning of a clause in a voyage policy giving liberty to touch at different ports to a permission to visit those only which are within the scope of the voyage insured." The scope of the voyage may include ports not exactly in the ordinary track of the specific voyage, but not those far outside or beyond the ordinary track. The Wells City (D. C.) 57 F. 317, affirmed 61 F. 857, 10 C. C. A. 123. Bringing the principle to the immediate case, the ports to which the West Aleta could go were those which, in a business sense, would be passed in the usual course

of the voyage from San Francisco to Cardiff. A few of the many well-considered cases are Leduc v. Ward, 20 Q. B. D. (1888); U. S. Shipping Board v. Bunge & Bern, 41 T. L. R. 73; Davis v. Garrett, 130 E. R. 1456; Ardan S. S. Co. v. Theband (D. C.) 35 F. 620. But nothing in the bill of lading justifies the view that a voyage to Hamburg was the adventure in contemplation. Smith v. U. S. Shipping Board, etc. (D. C.) 2 F. (2d) 390.

There is strength too, in the reasoning of the court in United States Shipping Board v. Bunge & Bern, supra, that the general liberty to deviate for the purpose of saving life and property gives some indications pointing to the view that the parties meant to give to their language a limited sense. In emergent circumstances, to save life or property, the ship could deviate without any restriction. Having such a clause under examination, the English Court of Appeals, speaking by Lord Bankes in United States Shipping Board v. Bunge & Bern, supra, said: "It appears to me that the clause itself contains indications which, in my opinion, point to the conclusion that the parties intentionally used the language they did in its limited conventional sense. A distinction is drawn between calling at a port for bunkering or supplies and deviating generally; the right to deviate without any restriction is conferred for the purpose of saving life or property. To obtain bunkers or supplies the liberty is confined to the right 'to call at any port or ports in any order.' There seems to me to be reason in this."

But it is said that the usage and practice of the trade gave to the bill of lading of the West Aleta a meaning

which allowed her to go to Hamburg, Rotterdam, and Cardiff, for which she was held out as a common carrier, in the order in which traffic and cargo conditions dictated. Doubtless underwriters are presumed to have knowledge of what is usually done by a ship in such a voyage, and the description of the voyage in the policy refers, of course, to the usual manner of making it. But the oral testimony in support of the contention that the usual and customary manner of performing a voyage from San Francisco to Cardiff was by going first to Hamburg and then to Rotterdam and then back to Cardiff lacks precision and is not convincing. Out of twelve vessels in the European Pacific service, only two called at Hamburg; none went to Rotterdam. There was testimony that the ships of the European Pacific line recognized a "range of ports" which included Bordeaux on the south, and Hamburg on the north, and would include the east coast of Ireland, and that the practical understanding of the liberty clause of the West Aleta was to go to any port in any order within the range. Whether oral testimony of the practical understanding was admissible may well be doubted. (Aetna Ins. Co. v. Sacramento Stockton S. S. Co. [C. C. A.] 273 F. 55; The Delaware, 81 U. S. [14 Wall.] 579, 20 L. Ed. 779; Arnold on Marine Ins. §56). But, passing that point and treating such evidence as legally received in defining what was the customary route, it fell far short of establishing a usage which would countervail the general maritime practice with reference to which the policy was made, that the ship shall pursue a direct course between her two termini, with permission to call only at any port or ports in or interjacent to the customary route (The Reeside, Fed. Cas. No.

11657). Our conclusion is that there was a deviation, the effect of which was to end the contract between the shippers and the carrier, thus making the carrier responsible for the loss of the merchandise. Pacific Coast v. Yukon Ind. Trans. Co., 155 F. 29, 83 C. C. A. 625; The Sarnia (D. C.) 278 F. 459.

Inasmuch as the deviation displaced the contract, the provisions of the Harter Act of 1893 afford no protection from the consequences of the wrongful act. As giving some support to that opinion, reference may be had to the concluding part of section 3 of that act, where the words limit the liability in cases of loss arising from saving or attempting to save life or property at sea "or from deviation in rendering such services." It is reasonable to say that, where there has been a deviation for a purpose other than to save life or property, there is liability.

The damages were measurable by the market value of the goods at the destination to which the ship undertook to carry them. St. Johns N. F. Ship Corp. v. Companhia, 263 U. S. 119, 44 S. Ct. 30, 68 L. Ed. 201; U. S. S. Co. v. Haskins, 181 F. 962, 104 C. C. A. 426. No avoidance of the consequence of the act of deviation can be predicated upon the grounds that the damages must be limited to such additional insurance premium as the shippers had to pay on account of the deviation. Respondent was insured against liability for deviation, and the defense in this suit on behalf of respondent is by the insurer, successor to American Steamship Owners' Mutual Protection & Indemnity Association. It is a fact that in-

surance was paid in full to libelants, but it is generally held that, upon payment of the loss, the insurer was subrogated to the rights of the insured. That doctrine was sustained by this court in Pacific Coast Steamship Co. v. Bancroft Whitney Co., 94 F. 180, 36 C. C. A. 135, and Steamship Wellesley v. Hooper & Co., 185 F. 733, 108 C. C. A. 71; The Citta Di Messina (D. C.) 169 F. 472.

It is suggested by the appellant that the Fleet Corporation is not liable because it was only the agent for the carrier, the United States. In Sloan Shipyard Corporation v. U. S. Shipping Board, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762, it was held that the Fleet Corporation is answerable for its acts, and may not be relieved upon the ground of agency. Justice Holmes there stated the general rule that a person within the jurisdiction always is amenable to the law, and continued: "Supposing the powers of the Fleet Corporation to have been given to a single man, we doubt if anyone would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts." The present suit is not one against the United States, but against the Fleet Corporation, and, if the act of the Fleet Corporation was unlawful even though a suit might have been brought against the United States, nevertheless those injured are not barred of a remedy against the agent that did the wrongful act. In re Eastern Shore Shipbuilding Cor-

poration, U. S. Shipping Board, etc., v. Wood (D. C.) 274 F. 893; Providence Engineering Corp. v. Downey Shipbuilding Corp. (C. C. A.) 294 F. 641; certiorari denied 264 U. S. 586, 44 S. Ct. 334, 68 L. Ed. 862; The Panola (C. C. A.) 9 F. (2d) 733, 1925 A.M. C. 1173; United States Shipbuilding Corp., etc., v. Banque Russo Asiatique (C. C. A.) 286 F. 918; Smith v. U. S. Shipping Board, etc. (D. C.) 2 F. (2d) 390.

We must also decide against the contention that, if the Fleet Corporation is liable there was an exclusive remedy under the Suits in Admiralty Act, March 9, 1920 (41 St. 525; Comp. St. Ann. Supp. 1923, §1251¼ et seq.). In Blamberg Bros. v. United States, 260 U. S. 452, 43 S. Ct. 179, 67 L. Ed. 346, it was held that under the Suits in Admiralty Act, which provides that, in view of the provisions for libel in personam, no vessel owned by the United States shall be subject to seizure by judical process in the United States, and that, in a case where, if such vessel were privately owned, a proceeding in admiralty could be maintained, a libel in personam may be brought against the United States, no libel can be maintained against the United States while the "vessel is not in a port of the United States or of one of her possessions." She Wan & Sons v. United States, 266 U. S. 108, 45 S. Ct. 45, 69 L. Ed. 192. The purpose of the suits in Admiralty Act as construed in the decisions referred to, is to substitute an action in personam for one of rem. In our case the ship, having been wrecked off the coast of a foreign country, and not having been in any port of the United States, at the time the libelants brought these suits,

and not having been at that time a merchant vessel, suit in rem could not have been brought under the Suits in Admiralty Act. The Cape Fear (D. C.) 8 F. (2d) 80; Atlantic Fruit Co. v. United States (D. C.) 8 F. (2d) 81; Markle v. United States (D. C.) 8 F. (2d) 87; Mack Engineering Co. v. United States (D. C.) 291 F. 713.

Appellants ask this court to apply the rule of laches. If respondents relied upon that defense, they should have pleaded accordingly. Green Star S. S. Co. v. Nan Yang Bros. Tobacco Co. (C. C. A.) 3 F. (2d) 369. However, it has been held in this circuit that a court of admiralty will, by analogy, follow the state statute of limitations. Pacific Coast S. S. Co. v. Bancroft Whitney, supra; Cresci v. Standard Fisheries (D. C.) 7 F. (2d) 378; Benedict on Admiralty, §554. Engel v. Davenport, 46 S. Ct. 410, 70 L. Ed.—, decided April 12, 1926, is not in conflict with our view.

The decrees are affirmed.

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In the Supreme Court
OF THE
United States

OCTOBER TERM 1927.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* vs. ROSENBERG BROTHERS & COMPANY.	No. 119
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* vs. CALIFORNIA WINE ASSOCIATION.	No. 120
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, *Petitioner,* vs. S. L. JONES & COMPANY.	No. 121

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

J. M. MANNON, JR.,
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EDWIN S. PILLSBURY,
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WARREN OLNEY, JR.,
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March , 1928.

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The present opinion holds this right to be limited or withdrawn as to suits in admiralty on account of the Suits in Admiralty Act of 1920.

The opinion also holds that where a statute of limitations is pleaded in exceptions (or demurrer) to a libel, which are overruled, and the excepting party answers over without pleading the statute of limitations, he may yet rely upon the statute. This is contrary to the established rule of this court ..... 2 - 3

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The decision herein is based on the great desirability of uniformity of remedy against the government and the Fleet Corporation, whereas this court held in the *Sloan Shipyards* case that uniformity was not a very serious consideration and could not control the conclusion of the court as to the statutes. There the court had under consideration uniformity as to all remedies, whereas here the court is dealing only with uniformity of remedy in the admiralty court ..... 13 - 14

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In the Supreme Court
OF THE
United States

October Term 1927.

United States Shipping Board Emergency Fleet Corporation, *Petitioner,* vs. Rosenberg Brothers & Company.	No. 119
United States Shipping Board Emergency Fleet Corporation, *Petitioner,* vs. California Wine Association.	No. 120
United States Shipping Board Emergency Fleet Corporation, *Petitioner,* vs. S. L. Jones & Company.	No. 121

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

The opinion was filed herein February 20, 1928. Respondents respectfully petition for a rehearing.

In May, 1922, this court held *(Sloan Shipyards Corp. v. Fleet Corporation,* 258 U. S. 549) that the Fleet Corporation was expected to contract and to stand suit in its own person like any other private corporation. Pursuant to that decision two of these suits were filed in October, 1922, and the third in November, 1923, in the same manner in which they would have been filed against a private corporation.

In October, 1927, four months prior to its decision herein, this court, in *United States ex rel. Skinner & Eddy Corp. v. McCarl, Comptroller General,*.....U. S....., 72 L. Ed. 13, affirmed the *Sloan Shipyards* case, saying:

> "Being a private corporation the Fleet Corporation may be sued in the state or federal courts like other private corporations."

In the case at bar, this court holds that since the passage of the Suits in Admiralty Act, the Fleet Corporation is not suable in admiralty, like other private corporations, saying:

> "It follows that after the passage of the Act no libel in admiralty could be maintained against the United States or the corporations on such causes of action except in accordance with its provisions."

Thus, those suitors who relied upon the ruling in the *Sloan Shipyards* case, reiterated in the *Skinner & Eddy* case, and brought libels in admiralty against the Fleet Corporation invoking the general admiralty jurisdiction of the District Court, find themselves without remedy, whereas, apparently, had recourse been had to the law side of the same court or to the Court of Claims, relief might have been secured.

This harsh conclusion has been reached through holding (1) the Suits in Admiralty Act of 1920 to provide an exclusive remedy in admiralty against the Fleet Corporation, and (2) that in the instant case the statute of limitations pleaded by demurrer was not waived by the defendant by answering over after the demurrer was overruled, contrary to the established rule of this court.

It is with great deference to this court that we submit that its ruling is incorrect in both particulars.

We shall discuss the point concerning the statute of limitations first, because we believe that point alone must finally control the disposition of this case.

I.

THE STATUTE OF LIMITATIONS CONTAINED IN THE SUITS IN ADMIRALTY ACT WAS NOT PLEADED AND HENCE SHOULD BE DISREGARDED BY THIS COURT.

The opinion of the court disposes of this proposition in the following language:

> "And although, as the libelants point out, this was not 'pleaded in any of the answers', it was aptly and sufficiently pleaded in the exceptions to the libels, which correspond to demurrers in actions at law."

These exceptions or demurrers were overruled (R. 41, 727, 792). Thereafter answers were filed in each case (R. 41, 727, 792), which neither pleaded the limitation nor in any way reserved any rights under the exceptions. Thus the case is one where exceptions or demurrers have been overruled, and thereafter answers have been filed. In such case the filing of the answer constitutes a waiver of the demurrer and thereafter the demurrer is not properly part of the record.

If this rule of practice, repeatedly promulgated by this court, is changed by the present decision, we respectfully submit it will be desirable to set forth the reason for the change and to announce the new rule in definite terms.

The rule is thus stated in

Young v. Martin, 8 Wall. (75 U. S.) 354; 19 L. Ed. 418, 419.

"But, independent of this consideration, the ruling of the court on this point would not be noticed, for it appears that the plaintiffs, instead of relying upon the sufficiency of the alleged demurrer, filed a replication to the answer. They thus abandoned their demurrer, and it ceased to be a part of the record."

To the same effect see:

Ferguson v. Meredith, 68 U. S. (1 Wall.) 25, p. 42; 17 L. ed. 604, 609:

"When the plaintiff replied *de novo,* after a demurrer was sustained to his original replication, he waived any right he might have had, to question the correctness of the decision of the court on the demurrer."

Bell v. Mobile & Ohio R. Co., 71 U. S. 598; 18 L. Ed. 338, 339:

"There is great confusion in the record in relation to the disposition of the demurrers and pleas in abatement; but, as Bell filed a plea to the merits and the parties went to trial, all antecedent irregularities were waived."

Aurora v. West, 7 Wall. (74 U. S.) 82; 19 L. Ed. 42, 46:

"Pleading over to a declaration adjudged good on demurrer is a waiver of the demurrer; and when a

defendant files a rejoinder to a replication, previously adjudged good on demurrer, his act in pleading over must for the same reason be held to have the same effect."

Campbell v. Wilcox, 10 Wall. (77 U. S.) 421; 19 L. Ed. 973, 974:

"In the third place, the filing of a plea to the merits after the demurrer was overruled, operated as a waiver of the demurrer. The pleading was thus abandoned, and ceased thenceforth to be a part of the record. Clearwater v. Meredith, 1 Wall. 42, 17 L. ed. 609; Aurora v. West (ante, 42); Young v. Martin (ante, 418); Brown v. R. R. Co., 18 N. Y. 495."

Stanton v. Embrey, 93 U. S. 548; 23 L. Ed. 983, 984:

"Authorities are referred to by the defendant in error, which support the proposition that pleading over to a declaration adjudged good on demurrer is a waiver of the demurrer; and there are many other decided cases to the same effect. Aurora v. West, 7 Wall. 92; 19 L. ed. 46; Bell v. R. Co., 4 Wall. 602, 18 L. ed. 339; Clearwater v. Meredith, 1 Wall. 42, 17 L. ed. 609; U. S. v. Boyd, 5 How. 51; Evans v. Gee, 11 Pet. 85; Jones v. Thompson, 6 Hill. 621."

Evans v. Gee, 11 Pet. 80, 85; 9 L. Ed. 639, 641:

"The counsel for the plaintiff in error also contended for the reversal of the judgment, on the ground of sundry irregularities in the progress of the cause in the court below, apparent on the record. Such as that a general demurrer had been filed, and had not been disposed of; that a nonsuit had been taken by the plaintiff in error, and that a motion to set it aside had been overruled; that the case had been submitted to a jury without an issue between the parties; and, finally, that the verdict, if an issue was made, had been returned by eleven, instead of twelve jurors. These irregularities, whatever might have been their

> original imperfections, if not waived, were, in our opinion, waived by the defendant going to trial upon the merits, and cannot now constitute any objection upon the present writ of error. For a writ of error does not bring up for review any irregularities of this sort."

The learned author of the opinion in the instant case recognizes the existence of this rule, though he considers the propriety of the order overruling demurrers in

Fleischmann C. Co. v. United States, 270 U. S. 349; 70 L. Ed. 624, 630.

> "This brings us to the consideration of the questions arising on the pleadings as to which errors are assigned. We may assume for present purposes, without deciding, that the defendants did not waive their demurrers, by pleading over to the merits after they had been overruled. Compare, however, Young v. Martin, 8 Wall. 354, 357, 19 L. ed. 418, 419; Stanton v. Embrey, 93 U. S. 543, 553, 23 L. ed. 983, 984; Teal v. Walker, 111 U. S. 242, 246; 28 L. ed. 415, 417, 4 Sup. Ct. Rep. 420; Bauserman v. Blunt, 147 U. S. 647, 652, 37 L. ed. 316, 318, 13 Sup. Ct. Rep. 466; Nalle v. Oyster, 230 U. S. 165, 174, 57 L. ed. 1439, 1442, 33 Sup. Ct. Rep. 1043; Denver v. Home Sav. Bank, 236 U. S. 101, 104, 59 L. ed. 485, 35 Sup. Ct. Rep. 265; Harper v. Cunningham, 8 App. D. C. 430, 434."

Nalle v. Oyster, 230 U. S. 165,

is not opposed to this view, as it depends upon Section 1553 of the Code of the District of Columbia.

Of course where the declaration fails to state a cause of action or the case is without the jurisdiction of the court, those points are not waived by pleading over after the overruling of the demurrer.

Teal v. Walker, 111 U. S. 242, 28 L. Ed. 415, 417.

It must be borne in mind that respondents' rights accrued prior to the passage of the Suits in Admiralty Act and at a time when without question they could have invoked the general admiralty jurisdiction of the district court.

Thus if the usual rules of pleading and practice are applied to this case, the statute of limitations cannot avail the petitioner, for it is not set forth in its answers, the only pleadings which may be here considered.

II.

THE STATUTES CONFERRING THE GENERAL ADMIRALTY JURISDICTION UPON THE DISTRICT COURTS HAVE NOT BEEN REPEALED BY IMPLICATION IN WHOLE OR IN PART BY THE SUITS IN ADMIRALTY ACT OF 1920.

It is not suggested that there is any express repeal. The question involved is whether there is an implied repeal. Ordinarily a remedy conferred by a later statute is held to be cumulative and not exclusive of one conferred by an earlier statute. The rule is stated as follows:

2 *Lewis' Sutherland Statutory Construction*, p. 1057.

> "Statutes affirmative of the right, and prescribing other than the usual remedies for its enforcement, or conferring cognizance of it upon other tribunals, not negativing the pre-existing remedies or jurisdiction, in their very nature are merely cumulative, and not exclusive."

So, in

Smithmeyer v. United States, 147 U. S. 342, 357-8, 37 L. Ed. 196, 200,

the rule is applied in the following language:

> "The Act of October 2, 1888, did not repeal, either expressly or by implication, the general jurisdictional Act of the Court of Claims, to the extent of this case. The purport of the Act of 1888 seems to have been to provide a method of adjusting the claim, if the claimants so desired, without a suit. The claimants had a right to the additional method, but they could also waive its benefit. The general jurisdiction of the Court of Claims and the additional method of adjustment can both of them well stand together. *De Groot v. United States*, 72 U. S., 5 Wall. 419, 432 (18:700, 703); *Gordon v. United States*, 74 U. S. 7 Wall. 188 (19:35); *Henderson's Tobacco*, 78 U. S. 11 Wall. 652 (20:235); *Shutte v. Thompson*, 82 U. S. 15 Wall. 151 (21:123); *Bechtel v. United States*, 101 U. S. 597 (25:1019); *Campbell v. United States*, 107 U. S. 407 (27:592); *Chew Heong v. United States*, 112 U. S. 536 (28:770); *United States v. Great Falls Mfg. Co.*, 112 U. S. 645 (28:846); *United States v. Harmon*, *ante*, 164."

This court has stated the rule as follows:

Frost v. Wenie, 157 U. S. 46, 58, 39 L. Ed. 614, 619.

> "And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it

was intended to cover the whole subject, and therefore, to displace the prior statute. McCool v. Smith, 66 U. S. 1 Black, 459, 468 (17:218, 221); United States v. Tynen, 78 U. S. 11 Wall. 88, 93 (20:153, 154); Red Rock v. Henry, 106 U. S. 596, 601 (27:251, 253); United States v. Three hundred and fifty-six Caddies of Tobacco, 78 U. S. 11 Wall. 652 (20:235); King v. Cornell, 106 U. S. 395, 396 (27:60)."

To the same effect, see: *McCool v. Smith,* 66 U. S. (1 Black) 459, 470, 17 L. Ed. 218, 222; *United States v. Tynen,* 78 U. S. (11 Wall.) 88, 20 L. Ed. 153, 154; *King v. Cornell,* 106 U. S. (16 Otto) 395, 396, 27 L. Ed. 60; *United States v. Auffmordt,* 122 U. S. 197, 208, 30 L. Ed. 1182, 1185; *Cope v. Cope,* 137 U. S. 682, 686, 34 L. Ed. 832, 833; *United States v. Healey,* 160 U. S. 136, 147, 40 L. Ed. 369, 373; *Ward v. Race Horse,* 163 U. S. 504, 511, 41 L. Ed. 244, 246, 247; *The Paquete Havana,* 175 U. S. 677, 685, 686, 44 L. Ed. 320, 323; *Chase v. United States,* 256 U. S. 1, 9, 65 L. Ed. 801, 807.

The Act clearly and expressly withdraws the pre-existing right *in rem.* Hence the expression of that withdrawal supports the idea that there was no withdrawal of other remedies.

This court has held that the main purpose of the Act was to exempt vessels of the United States from arrest and seizure. *Eastern Transportation Co. v. United States,* 272 U. S. 675, 689, decided January 3, 1927; *Blamberg Bros. v. United States,* 260 U. S. 452; *James Shewan & Sons, Inc., v. United States,* 266 U. S. 108; *Nahmeh v. United States,* 267 U. S. 122

We submit the Act cannot fairly be said to clearly supersede the prior jurisdiction of the admiralty court

in personal suits against the Fleet Corporation, for the lower courts have held to the contrary in the following cases: *Fleet Corporation v. Banque-Russo Asiatique-London,* 286 Fed. 918 (C. C. A.) (3d Cir. affirming 266 Fed. 897 and 281 Fed. 886); *Fidelity Trust Co. v. Fleet Corporation,* 15 Fed. (2d) 600; *Marshall Hall Grain Co. v. Fleet Corporation,* 14 Fed. (2d) 141; *Smith v. Fleet Corporation,* 2 Fed. (2d) 390 (the New York West Aleta Case); *Rosenberg Bros. & Co. v. Fleet Corporation* (instant cases below) 295 Fed. 372 (on exceptions to libels). 7 Fed. (2d) 893 (on merits), 12 Fed. (2d) 721 (affirmed on appeal).

There are no contrary decisions to our knowledge in the lower courts. The case is of first impression here.

In its opinion the court holds that the Suits in Admiralty Act of 1920 provides a complete and uniform system of remedy and from this deduces that by necessary implication the general admiralty jurisdiction conferred by earlier general statutes upon the district courts with regard to the Fleet Corporation has been withdrawn or narrowed. We submit, however, that the rule so invoked is improperly applied, because if there is a complete system of remedies installed, there must be some subject matter upon which it acts. This subject matter is, according to the opinion, the claims against the government or the Fleet Corporation arising out of the possession or operation of merchant vessels. If this is so, then the complete system of remedies so conferred would necessarily exclude not only suits *in admiralty* against the government or the Fleet Corporation, but such proceedings wherever brought. But

the court, in its opinion, expressly reserves the question whether other proceedings in courts of law or in the court of claims have been eliminated. If the reasoning of the opinion is to be accepted, the claims here in suit are to be held non-enforceable in these proceedings, we submit, not because they fall within the category of claims sought to be enforced in an admiralty court, but rather because they fall within the class of claims which constitute the subject matter of the complete system of remedy which the court in its opinion holds to have been established by the act. Hence, we respectfully submit that the court cannot logically in one line of the opinion say that a new and complete system of remedies has been installed and therefore that the particular remedy here invoked has failed, but rather either should reach the conclusion that the subject matter has been completely covered and hence that all remedies, including the one here invoked, have been so eliminated, or, on the other hand, must hold that no complete system of remedies has been installed, and accordingly that there is no repeal by necessary implication.

And where a general jurisdiction has been conferred, as here, upon the admiralty court, the rule is that the later statute giving the specific remedy does not supersede the earlier statute giving the general jurisdiction.

Thus in

Rosencrans v. United States, 165 U. S. 257,

the rule is expressed:

> "When there are statutes clearly defining the jurisdiction of the courts the force and effect of such pro-

> visions should not be disturbed by a mere implication flowing from subsequent legislation. In other words, where Congress has expressly legislated in respect to a given matter that express legislation must control in the absence of subsequent legislation equally express, and is not overthrown by any mere inferences or implications to be found in such subsequent legislation. Especially is this rule to control when it appears that Congress in some cases has made express provision for effecting a change."

In its opinion the court places some stress upon Section 13 of the Act, reading:

> "That the provisions of all other acts inconsistent herewith are hereby repealed,"

but we submit that this repealing clause is an express limitation upon the extent of the repeal; that is, it affects only those Acts necessarily inconsistent with the one under consideration. In other words, this clause adds nothing to the repealing force of the Act. This court so held in

> *United States v. Three Hundred and Fifty-six Caddies of Tobacco,* 78 U. S. (11 Wall.) 652, 655, 20 L. Ed. 235, 237-8,

saying:

> "The 125th section enacts 'that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.' This is an express limitation of the extent to which it was intended former acts should cease to be operative, namely, only so far as they are inconsistent with the new act. It is quite inadmissible to engraft upon this express declaration of legislative intent an implication of more extensive repeal."

> *Hess v. Reynolds,* 113 U. S. 73, 28 L. Ed. 927,

is to the same effect.

This court held in the *Sloan Shipyards* case that uniformity was not a very serious consideration and could not control the conclusion of the court from the statutes, saying (pp. 568-59):

> "It is suggested that there will be lack of uniformity if suits can be brought in state courts. This consideration cannot control our conclusion from the statutes. *But it is not very serious,* since such suits against this Corporation can be removed to the courts of the United States (Pacific R. Removal Cases, 115 U. S. 1, 29 L. ed. 319, 5 Sup. Ct. Rep. 1113), and afterwards are subject to review here (Creswill v. Grand Lodge, K. P., 225 U. S. 246, 258, 56 L. ed. 1074, 1078, 32 Sup. Ct. Rep. 822; Southern P. Co. v. Stewart, 245 U. S. 359, 562, 62 L. ed. 345, 472, 38 Sup. Ct. Rep. 130, 203.)"

This statement in the majority opinion written by Mr. Justice Holmes is criticized in the minority opinion written by the Chief Justice (258 U. S. 572), where he said:

> "Can Congress be supposed to have intended that these suits might be brought in forty-eight different states, and in courts of first instance of those states, with the lack of uniformity in the findings of fact and the conclusions of law likely to be encountered where trials are had by courts and by courts and juries in so many varying jurisdictions? Did it propose to allow the United States to be made liable in litigation anywhere or under any form of procedure without any regulation on its part to secure a reasonable limitation of its own as to the time within which such suits shall be brought?"

Thus in the *Sloan* case uniformity as to all of the remedies was urged by the minority of this court as a controlling consideration and definitely rejected by the ma-

jority, while in the instant case the court places its decision on the great importance of securing uniformity of remedy in admiralty alone against the government and the Fleet Corporation, leaving the question open as to whether uniformity has been secured as to other jurisdictions.

We submit, first, that uniformity of remedy in admiralty alone as against the government and the Fleet Corporation is not a major consideration, because actions at law may be brought in state courts or in the district court, and incongruity as to procedure and result is not eliminated; and, secondly, in the *Sloan* case this court has held that uniformity of remedy *as to all jurisdictions* is not a controlling consideration.

Respectfully submitted,

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March , 1928.

CERTIFICATE OF COUNSEL.

WE HEREBY CERTIFY that we are attorneys and of counsel for each of the respondents and petitioners in the above entitled causes and that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated: San Francisco, California,
March 10, 1928.

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FILED
DEC 6 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1927.

No. 119.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Petitioner,

v.

ROSENBERG BROTHERS & COMPANY.

No. 120.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Petitioner,

v.

CALIFORNIA WINE ASSOCIATION.

No. 121.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Petitioner,

v.

S. L. JONES & COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION AND BRIEF OF AMICUS CURIÆ.

JOHN C. PRIZER,
Amicus Curiæ.

The Evening Post Job Printing Office, Inc., 20 Vesey St., New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927

No. 119-121.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

ROSENBERG BROTHERS & COMPANY

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

CALIFORNIA WINE ASSOCIATION

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

S. L. JONES & COMPANY

PETITION

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your petitioner prays leave to file with this honorable Court the attached brief presented by petitioner as *amicus curiæ*.

Respectfully submitted,

JOHN C. PRIZER,
Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 119-121.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

ROSENBERG BROTHERS & COMPANY

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

CALIFORNIA WINE ASSOCIATION

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Petitioner

v.

S. L. JONES & COMPANY

BRIEF OF *AMICUS CURIÆ*

Interest of Present *Amicus Curiæ.*

The writer of the present brief is a member of the firm of proctors representing the libelants against the Fleet Cor-

poration in the parallel suits brought in the United States District Court for the Southern District of New York by Jacob Telfair Smith and Catz American Shipping Co., Inc., to recover damages for the loss of other cargo shipped on the "West Aleta" upon the voyage involved in the instant cases.

Our cases were tried prior to the trial in the instant cases. On July 10, 1924, Judge A. N. Hand, then District Judge of the Southern District of New York, handed down his opinion in favor of our libelants. On July 31, 1924, interlocutory decrees were entered. Owing, however, to the difficulty encountered in obtaining complete proof of damages, final decrees were not entered until January 29, 1926, when they were entered in the amounts of $149,449.45 in the *Smith* case and $40,381.58 in the *Catz* case.

In the instant cases damages were stipulated before trial and consequently final decrees were entered straightway upon the decision of the District Court upon the merits, on September 24, 1925. The District Court reached the same conclusion that Judge Hand had reached in our cases. An appeal in the present cases was promptly taken to the Ninth Circuit Court of Appeals where the decrees of the District Court were affirmed on May 10, 1926. Re-hearings were subsequently denied.

In our cases an appeal was taken to the Second Circuit Court of Appeals, but before the cases were reached for argument the instant case had been decided by the Ninth Circuit Court of Appeals, and this Court had granted its writ of certiorari. The Second Circuit Court of Appeals therefore postponed consideration of our cases pending the decision of this Court upon the instant cases.

Scope of this Brief.

It is not the purpose of this brief to discuss the points upon which the writer, as proctor in the New York cases, is not interested.

1. Our cases were brought in sufficient time to comply with the requirements of the Suits in Admiralty Act of March 9, 1920. We are therefore not interested in the question of the exclusiveness of the remedies under that Act, except as such question may affect the right to maintain the six per cent. interest allowed in the New York cases. We concur, however, with all of the views expressed in the brief for the respondents.

2. In our cases the shippers of the cargo had no shipments by the "West Aleta" for Hamburg.

3. In the larger of our cases the shipment was made from Seattle, where the vessel was not advertised for Hamburg at all until the day before sailing, when she was advertised "for Cardiff, Rotterdam, Hamburg." Thus while we deem that the parol evidence rule excludes the consideration of newspaper advertisements, we will not devote attention primarily to the subject.

4. Neither shipper in our cases maintained a place of business at Seattle or San Francisco and, therefore, we are not concerned with the information, if any, which may have been obtainable at San Francisco regarding the intention of the Fleet Corporation to send the "West Aleta" to the distant and dangerous port of Hamburg before allowing her to stop at Cardiff and Rotterdam.

We wish only to deal with some of petitioner's contentions upon the general subject of deviation which are necessarily involved in our cases as well as in the instant cases.

POINT I.

The definition of the voyage is a fundamental term of the contract of carriage set out in the bill of lading.

The petitioner in its brief says:

> "Clearly, the voyage of a ship is not to be determined by reference to a single bill of lading" (Petitioner's Brief, p. 26).

And again:

> "True, no provision of the written instrument may be varied by reference to the original offer, but the contract does not, and does not profess to, indicate either the scope or the route of the voyage" (Petitioner's Brief, p. 26).

Can the petitioner mean to contend that the bill of lading under which a particular shipper freights his merchandise does not constitute a complete contract between the shipper and the carrier? Were such a contention to be accepted, the terms of the contract would seem to be open to a great variety of parol evidence, and the written contract itself would be of little value. Furthermore, there would be no need of inserting in the bill of lading any deviation clause whatever, since the voyage would be determinable by extraneous circumstances.

The first and most important consideration to the shipper is that the carrier shall bind itself to carry his goods from the port of shipment to the desired port of destination; and, in order to permit the merchant to make his business arrangements, and in order to enable the insurer to determine what rate of insurance premium shall be exacted, the bill of lading must specify by what route, if other than the usual and direct route, the goods are to be carried.

As said by Lord Esher, *M. R.*, in the case of *Leduc* v. *Ward*, 20 Q. B. D. 475:

> "To suppose that there is no contract for a particular voyage in the bill of lading seems to me to be to disregard the whole course of mercantile business. It is obviously a most important part of the contract of carriage by sea that the route by which the goods are to be brought should be determined; and accordingly it seems to me to be provided for in the bill of lading. The ordinary form of bill of lading states that the goods are shipped on such a ship lying in the port of shipment and bound for the port of destination *and if the ship is to go to other places between those ports the names of them are inserted.* Those terms appear to me to describe a voyage, * * *" (20 Q. B. D. 480).*

Likewise in the other leading English case of *Margetson* v. *Glynn* (1892), 1 Q. B. 337; (1893) 1 A. C. 351, Lord Esher, in the Court of Appeals, said:

> "A bill of lading is a contract for the carriage of goods on a ship, and the first thing which the shipper and shipowner must agree upon is the voyage" (p. 339).

We had supposed the principle to be well settled both in this country and in England that parol evidence is inadmissible to vary the terms of a bill of lading.

St. Johns Corporation v. *Companhia Geral, etc.*, 263 U. S. 119;
The Sidonian, 34 Fed. 805;
Leduc v. *Ward*, 20 Q. B. D. 475.

It seems surprising to us that the petitioner should concede the inadmissibility of parol evidence to prove an express agreement between the shipper and the carrier contrary to the terms of the bill of lading, but should contend that the bill of lading is controlled by other extraneous evidence which might or might not have come to the attention of the shipper, such as the terms of bills of lading issued to other shippers and

* The Italics in this brief are ours.

advertising matter published in various newspapers. If the terms of the contract of carriage could be contradicted or supplemented by such evidence, how would the shipper ever know when and to what extent he might rely upon the terms of his express contract?

There is much more reason for applying the parol evidence rule strictly to bills of lading than to ordinary commercial contracts. The bill of lading is a negotiable document which is designed to pass both the benefit of the contract and the ownership in the goods while the latter are in transit, and frequently, as in one of our New York cases, passes to several endorsees before the arrival of the goods. Even when the bill of lading is not negotiated, it frequently is obtained, as in our other New York case, on behalf of a distant consignor and a more distant consignee. It would make commercial transactions difficult indeed if the persons receiving the bill of lading and their underwriters could not rely upon the document itself as embodying the correct and complete terms of the contract of carriage.

The principal and almost the only expressed obligation of the carrier under the present bills of lading was that expressed in the clause containing the restricted right of deviation. The controlling words of the clause describing the voyage and the duty of the carrier to transport the cargo are:

> "Received in apparent good order and condition * * * at San Francisco, California, * * * to be transported by the ship 'West Aleta' * * * unto the port of Cardiff (Rotterdam) * * * and there delivered in like apparent good order and condition" etc.

Almost every other clause in the bill of lading is inserted for the benefit of the carrier.

POINT II.

The deviation clause is construed with respect to and limited by the bill of lading voyage.

The very syntax of the deviation clause in the bills of lading shows that the clause is incidental to and limited by the bill of lading voyage, to wit, the voyage between the specified ports of shipment and destination.

As said by one of the Court in *Margetson* v. *Glynn* (1892), 1 Q. B. 337, at 340:

> "When you are describing a voyage and you add with regard to that voyage liberty to do something, would it be a reasonable construction to say, it meant that you may go on an absolutely different voyage?"

The Second Circuit Court of Appeals in the case of *The Panola*, 9 Fed. (2d) 733, at page 745, quoted with approval the following statement in *Scrutton* on *Charter Parties* (11th Ed.) Note pages 283-4:

> "All these clauses must be construed in the light of the commercial adventure undertaken by the shipowner. Thus, a clause giving leave 'to call at ports' will only allow a shipowner to call at ports which will be passed in the ordinary course of the named voyage in their geographical order; the words 'in any order' will allow the shipowner to depart from geographic order; but, even when there are general words giving liberty to call at ports outside the geographic voyage, these will be cut down by the special description of the voyage undertaken to ports in the course of that voyage."

Joyce in his work on the *Law of Marine Insurance* states:

> "A liberty of ports is always governed by the principle that the vessel in visiting a port or ports must be confined to those properly in the course of the voyage described *and embraced in the termini specified,* as well also as for

purposes connected with the objects of the voyage, and however general the liberty given may be as to its terms, it does not authorize changing the voyage."

Joyce on Insurance (2nd ed.) Sec. 2396.

The petitioner in its brief contends:

"The liberties clause should be construed to give greater freedom of choice of route in such a service—that is from a range of ports to another range of ports—than in a service from one port of loading to one port of discharge" (Petitioner's Brief, p. 27).

In the absence of a recognized and binding custom, the range of ports referred to by petitioner must be taken to mean such ports as the shipowner upon the particular occasion chooses to send his vessel to. How were the shippers on the "West Aleta"—and how were subsequent assignees of their bills of lading—to know on what voyage the "West Aleta" was bound if the petitioner could send her via any ports which it might wish to bring within the so-called range of her service?

There can be no doubt under the rule of law heretofore applied both in the courts of England and of this country to such a deviation clause that the ports of call are restricted to ports lying upon some route which can be said to constitute in a business sense a route between San Francisco and Cardiff (Rotterdam). Under no circumstances can the leave "to touch at any ports in any rotation or order in or out of the customary route * * * unto the port of Cardiff" authorize the vessel to pass some 800 miles directly beyond the terminus of the voyage with the necessity of subsequently retracing her course an equal distance to the specified port of destination.

If the Fleet Corporation, when receiving Cardiff and Rotterdam cargo for the "West Aleta" had been willing to accept it only upon the condition that the vessel should first proceed past those ports and on to the highly hazardous port of Hamburg and then retrace her steps before making

delivery, it should have specified clearly that the voyage would be made "via Hamburg", and should have inserted those words or words equally clear in the bills of lading. The shippers would then have had an opportunity to accept or reject the contract of affreightment on those terms, and the insurers of the cargo would have had an opportunity to charge a rate suitable to the extended voyage and the exceptional peril of the double passage through the mine areas, or to reject the risk altogether if they did not wish to extend their "line" on cargoes exposed to that exceptional peril. Likewise all assignees of the bills of lading would have been apprised of the greater and different dangers to which the goods were exposed.

POINT III.

The exceptional perils attendant upon the voyage to Hamburg would have rendered the call at Hamburg inadmissible even if the bills of lading had given an express right of deviation by going beyond the terminus of the voyage.

Even an express right to carry goods beyond the port of destination and subsequently bring them back again for discharge cannot be exercised unreasonably.

W. T. Sargent & Son v. *East Asiatic Co.*, 21 Comm. Cases 344 (1915).

A mere glance at the United States Government mine chart in evidence shows the exceptional peril attendant upon a voyage to Hamburg as compared with the voyage to Cardiff or Rotterdam. There was not only the direct danger of collision with the unswept mines, but the consequent greatly increased difficulties of navigation which were in fact directly

responsible for the loss of the "West Aleta" and her cargo. Before the cargo of the shippers could lawfully have been subjected to this extraordinary peril, they should have been given express notice so that they or their prospective insurers could have declined to accept the risk had they wished to do so.

CONCLUSION.

It is respectfully submitted that the decrees of the Circuit Court of Appeals should be affirmed.

JOHN C. PRIZER,
Amicus Curiæ.

Ltd.

SUPREME COURT OF THE UNITED STATES.

Nos. 119, 120, 121.—October Term, 1927.

119	United States Shipping Board Emergency Fleet Corporation, Petitioner, *vs.* Rosenberg Brothers & Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.
120	United States Shipping Board Emergency Fleet Corporation, Petitioner, *vs.* California Wine Association.	
121	United States Shipping Board Emergency Fleet Corporation, Petitioner, *vs.* S. L. Jones & Company.	

[February 20, 1928.]

Mr. Justice Sanford delivered the opinion of the Court.

These are consolidated libels *in personam*, brought in admiralty by the respondents against the Shipping Board Emergency Fleet Corporation in the Federal District Court for Northern California, in October, 1922, and November, 1923, to recover the value of goods shipped by them in December, 1919, and January, 1920, from San Francisco to ports in Wales and Holland, on the *West Aleta*, a merchant vessel owned by the United States and operated by the Fleet Corporation.[1] The libels alleged that the vessel deviated from the agreed voyage, passing the destined ports without entering and proceeding on a voyage to a port in Germany, and that in the course and by reason of such deviation the vessel stranded upon an island in the North Sea and became a total loss, with all her cargo. The Fleet Corporation filed exceptions to the libels on the ground, among others, that they were filed more than one year after the Suits in Admiralty Act[2] had gone into effect,

[1] The process was served on the Fleet Corporation.

[2] 41 Stat. 525, c. 95; U. S. C., Tit. 46, § 741 *et seq.*

and that by and under the provisions of that Act and particularly § 5 thereof the alleged causes of action were barred. These exceptions were overruled. 295 Fed. 372. The Fleet Corporation then answered, relying on the liberties clause in the bills of lading, denying that there had been any deviation, and alleging that the loss was caused by risks and perils for which it was not liable under the bills of lading and the Harter Act.[3] The District Court, on the hearing, finding that there had been an unauthorized deviation and that the suits were not barred or affected by the Suits in Admiralty Act, entered decrees in favor of the libelants for the value of the goods, with interest at the rate of 7 per cent. 7 F. (2d) 893. These were affirmed by the Circuit Court of Appeals, which held that there had been an unwarranted deviation and that the Suits in Admiralty Act was not applicable, since its purpose was to substitute an action *in personam* for one *in rem*, and no suit *in rem* could have been brought as the vessel had been wrecked off the coast of a foreign country and was a total loss. 12 F. (2d) 721.

The first contention of the Fleet Corporation is that these suits were barred by the limitation contained in § 5 of the Suits in Admiralty Act.

That Act, whose main provisions are set forth in the margin,[4] was approved and went into effect on March 9, 1920—several

[3] 27 Stat. 445, c. 105.

[4] The Act provides: "That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of . . or operated by or for the United States or such corporation . . shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States . . .

"Sec. 2. That in cases where if such vessel were privately owned or operated . . a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel. . Such suits shall be brought in the district court of the United States for the district in which the parties so suing . . reside or have their principal place of business . . or in which the vessel . . charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General

months after the alleged causes of action had arisen and more than a year before the libels were brought. It provided that no vessel owned by the United States or any corporation in which the United States or its representatives own the entire outstanding capital stock, or in the possession of or operated by or for the United States or such corporation, should be subject to arrest

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of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. .

"Sec. 3. That such suits shall proceed and be heard and determined according to the principles of law and . . rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum . . or at any higher rate which shall be stipulated. . If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel . . been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States . . or the United States Shipping Board Emergency Fleet Corporation, shall become void and be surrendered and canceled upon the filing of a suggestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act.

"Sec. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises. . .

"Sec. 8. That any final judgment rendered in any suit herein authorized . . shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or . . fund especially available therefor; otherwise there is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment. .

"Sec. 12. That the Attorney General shall report to the Congress at each session thereof the suits under this Act in which final judgment shall have been rendered . . against the United States and such aforesaid corporation. .

"Sec. 13. That the provisions of all other Acts inconsistent herewith are hereby repealed."

or seizure by judicial process, § 1; that where such vessel was employed as a merchant vessel and a proceeding in admiralty could be maintained if it were privately owned or operated, a libel *in personam* might be brought against the United States or such corporation, as the case might be, § 2; and that suits based on causes of action arising prior to the Act should be brought within one year after it went into effect, § 5.

It is unquestioned that the Fleet Corporation is one which may be sued by a libel *in personam* under the provisions of the Act.[5]

In *Eastern Transp. Co.* v. *United States*, 272 U. S. 675, 689-692 (1927), we held that, while the main purpose of the Act was to exempt from seizure and arrest merchant vessels of the United States operated by it and its subordinate shipping corporations and to substitute for a suit *in rem* one *in personam* attended with the incidents of a proceeding *in rem* in which the personal liability of the United States took the place of the vessel, the Act also had a wider effect and created a broader personal obligation of the United States, as the owner of an offending vessel, like that of a private owner, which might be enforced in admiralty by a libel *in personam* in cases where there was no basis for an action *in rem*.

In view of this decision the libelants do not now contend, as in the Circuit Court of Appeals, that the Act merely authorized a libel *in personam* as a substitute for a proceeding *in rem*. And the question here presented as to the effect of the Act is whether, as the Fleet Corporation contends, the remedy given against it by a libel *in personam* in admiralty under the provisions of the Act, is exclusive; or whether, as the libelants contend, this remedy is not exclusive and the Fleet Corporation may also, as a private corporation, be sued in admiralty by a libel *in personam*, independently of the provisions of the Act.

The Act not only authorizes libels *in personam* to be brought in admiralty against the United States or the designated corporations on causes of action arising out of the possession or operation of merchant vessels, §§ 1, 2, but fixes the venue in such suits,

[5]All of the capital stock of the Fleet Corporation is owned and held by the United States Shipping Board on behalf of the United States, *United States* v. *McCarl*, 275 U. S. 1; in operating merchant vessels it acts for and on behalf of the United States, *Emergency Fleet Corp.* v. *Western Union Telegraph Co.*, 275 U. S. —; and it is referred to specifically in § 4 of the Act.

§ 2;—requires service on the United States or the corporation to be made upon the United States attorney, with notice to the Attorney General, § 2;—applies to the suits the principles of law and rules of practice obtaining in like cases between private parties, § 3;—limits the rate of interest which may be included in a money decree against the United States or the corporation, to 4 per cent. unless otherwise stipulated, § 3;—exempts the United States or the corporation from the giving of any bond or admiralty stipulation, and provides that those previously given in any admiralty cause shall be canceled upon the assumption of liability by the United States, § 3;—requires suits based on causes of action that had arisen before the Act to be brought within one year after it goes into effect, and all other suits within two years after the cause of action arises, § 5;—directs that the final judgments rendered in the suits, as well as those in previous admiralty causes in which the United States assumes liability, shall be paid by the accounting officers of the United States out of money in the Treasury, for which an appropriation is made, §§ 3, 8;—requires the Attorney General to report to each session of Congress all final judgments rendered against the United States or the corporation;—and specifically repeals "the provisions of all other Acts" inconsistent with the Act, § 13.

The Act plainly relates to causes of action which had previously arisen,[6] as well as to those subsequently arising. It provides a remedy in admiralty for adjudicating and satisfying all maritime claims arising out of the possession or operation of merchant vessels of the United States and the corporations, in which the obligation of the United States is substituted for that of the corporations. To that end it furnishes a complete system of administration, applying to the United States and the corporations alike, by which uniformity is established as to venue, service of process, rules of decision and procedure, rate of interest, and periods of limitation; and not only provides that the judgments against the corporations, as well as those against the United States, shall be paid out of money in the Treasury, but repeals the inconsistent provisions of all other Acts.

In view of these provisions of the Act we cannot doubt that it was intended to furnish the exclusive remedy in admiralty against

[6]Except as to those that had arisen prior to April 6, 1917, § 5.

the United States and the corporations on all maritime causes of action arising out of the possession or operation of merchant vessels. And nothing in its legislative history indicates a different purpose.

It follows that after the passage of the Act no libel in admiralty could be maintained against the United States or the corporations on such causes of action except in accordance with its provisions; and that as the libels in these cases were not brought against the Fleet Corporation within the period prescribed by § 5 they were barred. And although, as the libelants point out, this was not "pleaded in any of the answers," it was aptly and sufficiently pleaded in the exceptions to the libels, which correspond to demurrers in actions at law.

Whether in addition to furnishing an exclusive remedy in admiralty, the Act also prevents a resort to any concurrent remedies against the United States or the corporations on like causes of action in the Court of Claims or in courts of law, is a question not presented by these cases and upon which, although referred to in the argument, we express no opinion. And it is unnecessary to determine other contentions of the Fleet Corporation relating to the questions of deviation and laches.

The decree of the Circuit Court of Appeals is reversed; and the cause will be remanded to the District Court with instructions to dismiss the libels.

Reversed.

Mr. Justice McReynolds is of opinion that the decree of the Circuit Court of Appeals should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.